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Spettabili Autorità,

ci riferiamo al Documento di Consultazione relativo alla Disciplina dei servizi di gestione accentrata, di liquidazione, dei sistemi di garanzie e delle relative società di gestione e all'invito agli operatori di mercato di far pervenire le proprie osservazioni a tale documento entro la data odierna per trasmettere in allegato commenti e richieste della società **LCH.Clearnet Group Limited**, con sede legale in Aldgate House, 33 Aldgate High Street, London EC3N 1EA.

Ribadiamo che tali commenti e richieste provengono dalla LCH.Clearnet Group Limited (e non dallo Studio Dewey & LeBoeuf) a nome della quale società ringraziamo per l'opportunità offerta di partecipare alla procedura di consultazione in oggetto.

Rimaniamo a disposizione per ogni eventuale chiarimento e porgiamo cordiali saluti.

Avv. Barbara Urselli

Avv. Fabio Pizzoccheri

Banca d'Italia
Ufficio Supervisione sui Mercati
Via Capo le case 45
00187 ROME

CONSOB
Divisione mercati
Via G. B. Martini 3
00198 ROME

London, 16 November 2007

Via email

Re: Consultation paper on "*Disciplina dei servizi di gestione accentrata, di liquidazione, dei sistemi di garanzia e delle relative società di gestione*" dated of October 2007 (the "Consultation Paper")

Reference is made to the Consultation Paper and the invite from Banca d'Italia and CONSOB to market participants to submit their views and analysis on the draft regulation relating to central depository and clearing systems and guarantee systems.

Below please find comments and requests of LCH.Clearnet Group Limited, with Registered office in Aldgate House, 33 Aldgate High Street, London EC3N 1EA.

Reference herein to articles and paragraphs are to articles and paragraphs of the Consultation Paper.

* * *

- Article 3, Paragraph 1

In relation to the form "*Societa' per Azioni*" required for *Societa' di Gestione*, we seek clarifications as to whether foreign entities, such as a private limited company (Ltd) in the United Kingdom and a société anonyme (sa) in France, would be deemed to meet such requirement and, thus, can be authorised to operate as *Societa' di Gestione*.

- **Article 12, paragraph 1, letter g)**

In relation to the requirement of "*misure di vigilanza equivalenti*" established for foreign entities, we would like to express our concern in connection with the ability of a foreign entity to provide the relevant services in Italy.

While we acknowledge that national authorities are to define the conditions under which operators of financial infrastructure operate, we believe that an agreed and effective framework for supervisory co-operation between national authorities is really needed in order to avoid that different national requirements will place so heavy a burden on a provider of the relevant services in multiple jurisdictions to the detriment of an efficient and a competitive market for the provision of the services.

In this respect, we would like to note that there are precedents for the establishment of bilateral recognition regimes such as between the UK's FSA and Germany's BaFin in relation to Eurex Clearing, where each bilateral recognition regime has been tailored to the specific case. Such arrangements, in accordance with an agreed framework, should obviate the need for the kind of direct supervision of a foreign entity that seems to be envisaged under the requirement in question.

- Article 12, paragraphs 1 and 2

- paragraph 1: we seek clarifications in relation to the purpose and the meaning of the qualification as "*intermediari*" for those entities which can access the service (including, for example, the Bank of Italy).

- paragraph 2: we seek clarifications as to why it is not possible for foreign entities to open proprietary accounts in the system. If this is a reference to a direct as opposed to an indirect (intermediated) account, this would appear to deny a foreign operator the ability to obtain the most secure and efficient central access to central infrastructure on the same terms as a domestic operator.

- Article 47, paragraph 1)

In relation to the requirement that the data are subject to a prior checking before they are submitted to the *Societa' di Gestione*, we seek clarifications as to whether any greater specificity is envisaged over how such checking can be performed by alternative - including foreign - operators.

- Article 49, paragraph 2, Article 57, paragraphs 1 and 2, article 61, paragraph 4, and article 63, paragraph 4

Reference is to "*banche autorizzate in Italia ovvero comunitarie*": our understanding is that, for the purposes of the above mentioned provisions, any EU bank is eligible and not

only EU banks which have notified Banca d'Italia of their intention to provide services in Italy in compliance with the Banking Directive.

We would appreciate if this could be clarified.

- **Article 56, paragraph 1, letter i)**

It is required that the rules of the companies managing guarantee systems specify, among the others: "*le condizioni e le modalità con cui consentire ai partecipanti diretti che lo richiedano di effettuare per singoli committenti il versamento dei margini a garanzia delle perdite potenziali derivanti dal saldo ottenuto dalla compensazione delle posizioni contrattuali dei committenti medesimi (marginazione lorda per singolo committente)*".

In this respect, we would like to highlight that the legal structure of central counterparties generally have various modalities of netting in the determination of exposures and, therefore, of collateral requirements in relation to such exposures and may only recognise claims relating to markets positions made by its clearing members. An obligation to allow for the provision of collateral in relation to a specific individual customer's position would, therefore, create difficulties to such central counterparties.

Therefore, we would propose that the above is only a possibility that the central counterparties may introduce in their rules and not an obligation to allow the provision of collateral for individual customer's positions.

- **Article 56, paragraph 1, f)**

We believe that a central counterparty should have the right to determine the forms of collateral that it accepts in relation to the obligations it assumes. While we agree with the principle that regulators and supervisors may object to acceptance of a form of collateral on the grounds that in the view of the authorities is "too risky", we would have concerns if the provision in question would lead to a situation where a central counterparty is required by the authorities to accept a form of collateral that the central counterparty views as too risky.

- **Article 69, third paragraph 1, letter i)**

In relation to the report regarding costs and benefits with respect to markets, intermediaries and customers, we believe that market forces should determine costs and benefits of competing suppliers, subject of course to necessary prudential requirements such as those described in Article 51.

The determination of those costs and benefits will, in any organisation serving multiple markets, require the allocation of common costs and benefits to those markets. If the purpose of the requirement is to assess the relative efficiency of one (potential) operator

over another - and potentially influence a decision to approve or to withhold approval, an agreed and common methodology should be established for the allocation of those costs and benefits.

- Article 70, third paragraph 2

In relation to the obligation to send to Consob and the Bank of Italy a report on revenues and costs for each activity, we seek confirmation that the definition of "*ciascuna attivita svolta"*" is in line with articles 42 and 43 of the *European Code of Conduct for Clearing and Settlement*.

- Part III, "Liquidazione delle insolvenze di mercato"

It is our understanding that, in order to be subject to the procedures on market insolvency, reference should be to the market on which the relevant insolvency event occurs rather than to the principal market on which the participant operates or to the home country of the participant itself.

While we appreciate the need that such kinds of insolvencies are cured under the supervision of the regulatory authorities of the relevant markets, we feel also the need to highlight that this could cause conflicting rules and procedures to be applicable, thus creating confusion on the participants themselves.

In order to limit as much as possible the risk of confusion and conflicts most of all for foreign operators, the field of application of the Italian rules on market insolvency should be clarified, thus making clear that a foreign participant also operating on the Italian market is not subject to Italian rules on market insolvency, should a foreign firm default to such participant on a foreign market.

For example, should LCH.Clearnet Ltd be successful in providing clearing services for the Borsa Italiana as well as the markets it serves currently in the UK, it would not seem appropriate for the provisions of this article to apply to, for example, the default of a UK firm trading only on UK markets.

Annex 1: Linee guida per la business continuity dei sistemi di post-trading

We agree on the fundamental importance and necessity to ensure the business continuity of post-trading systems and we appreciate the efforts of providing guidelines aiming at guaranteeing a minimum common level of protection of business continuity.

We fully support the most rigorous application of such kind of requirements. So, to our knowledge, do all relevant European regulatory and supervisory bodies. At the same time, we are concerned that different requirements imposed by national authorities in

Europe could lead to conflicting demands, most of all for those companies operating in different countries, which could face problems and difficulties in dealing with the different requirements.

In this respect we strongly recommend that the requirements to ensure business continuity of post-trading systems are laid down by the European regulatory/supervisory authority in co-operation as part of the framework described above.