

Memorandum of Understanding (MOU)
on
Co-operation for the Supervision of Clearing Service Providers
between
the Financial Services Authority
and
the Stichting Autoriteit Financiële Markten
and
De Nederlandsche Bank NV

Preamble

- A. The following Authorities in the Netherlands and the United Kingdom have or will have responsibility for the Supervision of Clearing Service Providers:

In the Netherlands:

- (a) The Stichting Autoriteit Financiële Markten ("AFM") and De Nederlandsche Bank NV ("DNB") are responsible for the oversight of Clearing Service Providers operating in the Netherlands.

In the United Kingdom:

- (b) The Financial Services Authority ("the FSA") is responsible for the supervision of Clearing Service Providers operating in the UK through its regulation of recognised clearing houses under the Financial Services and Markets Act 2000 (FSMA). The FSA co-operates with regard to the supervision of clearing and settlement services with any relevant authorities in EU Member States or States of the EEA.

- B The FSA and the Dutch Authorities acknowledge that Clearing Service Providers which are regulated by the Dutch Authorities may wish to offer clearing services in the UK and that Clearing Service Providers which are regulated by the FSA may wish to offer clearing services in the Netherlands.
- C. The FSA and the Dutch Authorities therefore wish to enter into this MOU to further facilitate, through the exchange of information and any other assistance, their co-operation in relation to the supervision of Clearing Service Providers regulated principally in either the Netherlands or the UK and operating in the other's jurisdiction.

Interpretation

1. In this MOU:

"Authorities" means the authorities listed in paragraph A of the preamble.

"Clearing Service Provider" means an entity providing clearing services and subject to the principal regulatory oversight of the AFM and DNB in the Netherlands, or of the FSA in the UK (as a Recognised Clearing House) but which provides clearing services in the other's jurisdiction.

"Dutch Authorities" means the Stichting Autoriteit Financiële Markten and De Nederlandsche Bank NV.

"Person" means a natural person, legal entity, partnership or unincorporated association.

"Recognised Clearing House" means a UK Clearing Service Provider recognised under section 285 and 290 of FSMA.

"Recognised Overseas Clearing House" means an entity recognised under section 285 and 290 of FSMA in respect of a non-UK applicant.

"Requested Authority" means the Authority to whom a request is made under this MOU.

"Requesting Authority" means the Authority making a request under this MOU.

"Supervision" means regulation, supervision and oversight including oversight by the FSA of a Recognised Overseas Clearing House operating in the UK and oversight by AFM and DNB of a Recognised Clearing House operating in the Netherlands.

Purpose of the MOU

2. The purpose of this MOU is to facilitate co-operation between the Dutch Authorities and the FSA in order to promote effective Supervision by the Authorities of Clearing Service Providers regulated principally in either the Netherlands or the UK and operating in the other's jurisdiction, and to reduce any regulatory overlap. The Dutch Authorities and the FSA shall specify each Clearing Service Provider to which this co-operation shall apply in a separate letter agreement

Effect of the MOU

3. This MOU does not modify or supersede any laws or regulatory requirements in force in, or applying to, the Netherlands or the United Kingdom. It is a statement of intent of the FSA and the Dutch Authorities and is not intended to create any binding legal obligations, or to fetter the discretion of the Authorities in any way in the discharge of their functions. It is also not intended to prejudice the individual responsibilities or autonomy of any Authority. This MOU does not affect any other arrangements between the Authorities or any arrangements between the Authorities and a Clearing Service Provider or third parties.

Principles for the Supervision of Clearing Service Providers

4. The Authorities are or will be, in relation to Clearing Service Providers, responsible for performing their respective supervisory functions set out in paragraph A of the preamble.

5. Any division of responsibility for the Supervision of Clearing Service Providers shall be based on the respective legal or supervisory responsibilities of each of the Authorities.

Principles for co-operation between the FSA and the Dutch Authorities

6. The FSA and the Dutch Authorities will co-operate closely and specifically exchange information in a timely way to assist each other to perform their respective functions relating to the Supervision of Clearing Service Providers.
7. The FSA will (either on its own initiative or at the request of the AFM or DNB) provide to either one or both of the Dutch Authorities relevant information about any matter that is likely to assist the Dutch Authorities to perform their respective functions relating to the Supervision of Clearing Service Providers.
8. The Dutch Authorities will (either on their own initiative or at the request of the FSA) provide the FSA with relevant information about any matter that is likely to assist the FSA to perform its functions relating to the Supervision of Clearing Service Providers.
9. Without limiting the scope of clauses 7 and 8, information to be provided under those clauses should include information relevant to:
 - (a) systemic risk issues;
 - (b) the ability of a Clearing Service Provider to meet its financial requirements;
 - (c) the fitness or propriety of a Clearing Service Provider, or a person employed or associated with a Clearing Service Provider, to perform its functions; and
 - (d) the adequacy of the systems and controls, the organisation and the internal control systems of a Clearing Service Provider.
 - (e) conduct of business issues, i.e. issues with regard to efficiency, transparency and governance

10. The FSA will endeavour to notify one of the Dutch Authorities if it proposes to take any regulatory action in relation to a Clearing Service Provider which might have a material effect on the performance by either of the Dutch Authorities of their functions. If it is not possible to notify one of the Dutch Authorities before taking such action, notification to one of them shall be made as soon as practicable thereafter.
11. The Dutch Authorities will endeavour to notify the FSA if either of the Dutch Authorities propose to take any regulatory action in relation to a Clearing Service Provider which might have a material effect on the performance by the FSA of its functions. If it is not possible to notify the FSA before taking such action, notification shall be made as soon as practicable thereafter.

Meetings of Authorities

12. Representatives of the FSA and either or both of the Dutch Authorities will meet periodically, as necessary, to discuss issues of common interest relating to the Supervision of Clearing Service Providers and to improve co-operation between the Authorities. Without prejudice to any of the Authorities' domestic competences and responsibilities, the issues to be discussed at these meetings may include, but will not be limited to:
 - (a) assessment of risks affecting Clearing Service Providers' clearing services or systems subject to the Authorities' supervision;
 - (b) material and substantive developments to Clearing Service Providers' provision of clearing services;
 - (c) compliance with EU and other international standards for clearing services or systems, including the Recommendations for Central Counterparties of the Committee on Payment and Settlement Systems and of the Technical Committee of the International Organization of Securities Commissions, dated November 2004, as may be amended from time to time (the "CCP Recommendations"); and
 - (d) improving co-operation and co-ordination between the Authorities.

Representatives of a Clearing Service Provider may be invited for meetings with the FSA and either or both of the Dutch Authorities.

13. The FSA and the Dutch Authorities may in certain circumstances endeavour to hold a monthly conference call to discuss issues of common interest relating to the Supervision of a particular Clearing Service Provider and to improve co-operation between the Authorities. On a quarterly basis this call may include discussions between the FSA, the Dutch Authorities and representatives of the particular Clearing Service Provider in question.

Additional arrangements

14. Other practical arrangements regarding the modalities of co-operation between the FSA and the Dutch Authorities may be agreed upon.

Requests for assistance

15. Requests for the provision of information or other assistance will, wherever possible, be made in writing, but in cases of urgency may be oral and confirmed in writing within 5 business days. To facilitate assistance, the Requesting Authority should specify in any written request:

- (a) the information or other assistance sought by the Requesting Authority;
- (b) a general description of the matter which is the subject of the request;
- (c) the purpose for which the information or other assistance is sought;
- (d) if information is provided by the Requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
- (e) where onward disclosure of information provided to the Requesting Authority is likely to be necessary, the identity of the person to whom disclosure may be made and the reasons for such disclosure;
- (f) the desired time period for a reply;
- (g) any other matters specified by the Requested Authority.

16. Where the Requested Authority is either of the Dutch Authorities, the Requesting Authority will use best endeavours to inform the other Dutch Authority of the request as soon as practicable.

Treatment of requests

17. If a request for information or assistance is made, the Requested Authority will use all reasonable efforts to provide the information or assistance to the Requesting Authority, subject to its applicable laws, regulations and requirements and overall policy.
18. In any case where the request cannot be fulfilled in part or whole, the Requested Authority will consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.

Permissible uses of requested information

19. The Authorities shall use any information provided by the Requested Authority solely for the purposes of carrying out their functions relating to the Supervision of Clearing Service Providers.

Confidentiality

20. Each Authority shall maintain the confidentiality of any non-public information it receives under this MOU. The Authorities shall not disclose such information, including by transmission to any other authorities, without the prior approval of the Authority that provided the information and subject to any other legal and regulatory constraints.
21. In the event of a legally enforceable demand to disclose any information received under this MOU, the Authority receiving the demand will notify the Authority that provided the information of such a demand prior to complying with it, and will assert all appropriate legal exemptions or privileges from disclosure with respect to that information as may be available.

Contact points

22. A list of contact points to which information or requests for information and assistance under this MOU should be directed is set out in Appendix 1. Any Authority may amend its contact information set out in the list by giving written notice to the other Authorities.

Costs

23. The Requested Authority may, as a condition of agreeing to give information or assistance under this MOU, require the Requesting Authority to make a contribution to costs if the cost of fulfilling a request is likely to be substantial.

Entry into effect and termination

24. This MOU shall come into force on the date when it is executed by the FSA and the Dutch Authorities, and will continue to have effect until the expiration of 30 days after either the FSA or the Dutch Authorities, acting jointly, give written notice to the other of their intention to terminate co-operation under the MOU. If either the FSA or the Dutch Authorities give such notice, co-operation will continue with respect to all requests for information or assistance that were made under the MOU before the effective date of notification until the Requesting Authority terminates the matter for which information or assistance was requested. In the event of the termination of this MOU, information obtained under it will continue to be treated in the manner prescribed under clause 19, 20 and 21.

Review of MOU

25. The FSA and the Dutch Authorities will keep the operation of this MOU under review and will consult when necessary with a view to improving its operation and resolving any matters.

Amendment of MOU

26. This MOU may be amended by the joint agreement of the FSA and the Dutch Authorities.

Additional parties

27. The FSA and the Dutch Authorities may jointly agree that other authorities may become signatories of this MOU.

Appendix 1: Contact Points

For the FSA

Name: Ben Mitchell
Telephone: +44 20 7066 2302
Fax: +44 20 7066 2303
Address: FSA, 25 The North Colonnade, Canary Wharf, London E14 5HS
E-mail: ben.mitchell@fsa.gov.uk

For Stichting Autoriteit Financiële Markten

Name: Sander van Leijenhorst
Telephone: +31 20 797 2800
Fax: +31 20 797 3815
Address: AFM, Vijzelgracht 50, P.O. Box 11723, 1001 GS Amsterdam
E-mail: sander.van.leijenhorst@afm.nl

For De Nederlandsche Bank NV

Name: Froukelien Wendt
Telephone: +31 20 524 3266
Fax: +31 20 524 2513
Address: DNB, Westeinde 1, P.O.Box 98, 1000 AB Amsterdam
E-mail: f.w.wendt@dnb.nl

Letter agreement as referred to in art. 2 of the Memorandum of Understanding (MoU) between FSA, AFM and DNB regarding co-operation for the Supervision of Clearing Service Providers

Pursuant the MoU signed by the Financial Services Authority (FSA), the Stichting Autoriteit Financiële Markten (AFM) and De Nederlandsche Bank NV (DNB) (the Authorities) on 2009, the Authorities agree the following.

European Multilateral Clearing Facility NV (EMCF)

The Authorities agree that EMCF will be considered a Clearing Service Provider pursuant to paragraph 1 of the MoU.

It is expected that clearing and settlement organisations, including central counterparties, will be regulated by the Act on Financial Supervision (the "Draft Act"). The Draft Act is currently being revised by the Dutch legislator and its implementation date is unclear. Until the Draft Act is implemented, AFM and DNB have contractually agreed with EMCF that AFM and DNB will be responsible for the oversight of EMCF as a central counterparty and clearing organisation on the basis of the Recommendations for Central Counterparties of the Committee on Payment and Settlement Systems ("CPSS") and of the Technical Committee of the International Organization of Securities Commissions ("IOSCO"), dated November 2004, as may be amended from time to time (the "CCP Recommendations"), that EMCF will comply with such CCP Recommendations and all instructions, measures, restrictions and conditions which AFM and/or DNB in their/its sole discretion may deem necessary or desirable to impose on the EMCF in relation thereto.

EMCF was recognised by the FSA as a Recognised Overseas Clearing House with effect from 29th January 2009.

European Central Counterparty Ltd (EuroCCP)

The Authorities agree that EuroCCP will be considered a Clearing Service Provider pursuant to paragraph 1 of the MoU.

EuroCCP provides CCP services to NYSE Arca Europe, a Dutch MTF, and is supervised by the AFM and DNB with effect of the 6th of February 2009.

EuroCCP was recognised by the FSA as a Recognised Clearing House with effect from 27th March 2008.

Frequency of information exchange

The Authorities agree to endeavour to hold a monthly conference call to discuss issues of common interest relating to the Supervision of EuroCCP and EMCF and to improve co-