

M. Michel Barnier
Commissioner for Internal Market and Services
European Commission
BERL 10/034
B - 1049 Brussels
Belgium

c/o LCH.Clearnet Group Ltd
Aldgate House
33 Aldgate High Street
London
EC3N 1EA

May 27, 2010

Dear Commissioner:

I am writing you on behalf of the European Association of Central Counterparty Clearing Houses (also known as "EACH"). EACH, formed in 1991, works to further dialogue on the adoption of best clearing and risk management practices as well as to support strategic progress on regulatory harmonisation and the enhancement of European and global standards. Its membership consists of 21 European CCPs, listed at the end of this letter. It has been heavily engaged with the Commission's work programme in recent years in developing a single European market for financial services and has had a number of fruitful meetings with your Services staff.

Many EACH members count US firms amongst their direct and indirect users and are deeply concerned about a development in the evolving US legislative proposal: specifically, a provision of House bill H.R. 4173, the "Wall Street Reform and Consumer Protection Act of 2009," known as the Miller-Moore Amendment, in section 1609(a)(4)(D)(iv). This provision allows the US Federal Deposit Insurance Corporation, the FDIC, to impose a ten per cent haircut against secured creditors while exercising its resolution authority for a systemically important institution.

For a CCP to ensure performance of the contracts to which it is party, it has to have absolute claim on the margins deposited with it. Anything less would undermine the ability of a CCP to discharge the functions expected of it in general, and of mitigating systemic risk in particular. EACH believes that this provision might be interpreted to give the FDIC authority to reach collateral deposited at a CCP by a member. Such authority would disrupt, and interfere with, a CCP's management of exposures to an insolvent member's positions. Specifically, it would inject uncertainty into a CCP's calculations of the margin amounts it should require for a clearing member because there might be a competing claim on the funds. Furthermore, it should be noted that the funds on deposit with a CCP are a core risk management control that provides critical systemic risk protection to other, non-failing members and their customers and a key mechanism in preventing one member's failure from having a domino effect throughout the global economy.

There is also a wider concern that we would like to draw to your attention. The provision is only applicable to securities that are not issued by the US

Government or its agencies. As a result it effectively penalises issuers of European government and supranational debt.

As the US Senate and House financial reform bills are reconciled, and the Commission continues its dialogue with the US political, regulatory and legislative authorities in order to agree a consensus on the new global financial framework, EACH asks the Commission to use its influence to recommend that the conferrees reject the Miller-Moore Amendment because of the provision's impact on CCPs. CCPs have been and continue to be a source of stability in turbulent times. A provision like the Miller-Moore Amendment would undermine the widely-endorsed policy of encouraging centralised clearing and could undermine CCPs' ability to continue to be stabilising factors in the future. We believe that the amendment should be deleted from the final bill to prevent such a negative outcome.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rory Cunningham'.

Rory Cunningham
Chairman, EACH

Cc: Marcus Zickwolff, Secretary, EACH
Mr. Bertrand Dumont
Mr. Emil Paulis
Mr. Patrick Pearson

List of EACH members

Cassa di Compensazione e Garanzia S.p.A. (Italy)

CCP Austria

CSD and CH of Serbia

European Commodity Clearing AG (Germany)

European Multilateral Clearing Facility (Netherlands)

Eurex Clearing AG (Germany)

European Central Counterparty Ltd (United Kingdom)

HELEX AS (Greece)

ICE Clear Europe (United Kingdom)

KDPW SA (Poland)

KELER CCP Ltd. (Hungary)

LCH.Clearnet Ltd (United Kingdom)

LCH.Clearnet SA (France)

MEFF (Spain)

NASDAQ OMX (Sweden)

National Clearing Centre (Russia)

NOS ASA (Norway)

NYSE LIFFE Clearing (United Kingdom)

OMIClear (Portugal)

Oslo Clearing ASA (Norway)

SIX x-clear AG (Switzerland)