

CP 2008-01

European Central Counterparty Limited (“EuroCCP”)

Proposed Rule Change

Consultation Paper

November 4th, 2008

Purpose of Proposed Change:

The purpose of the proposed change is to clarify EuroCCP's Rules regarding the timing of EuroCCP's trade guarantee.

Introduction:

EuroCCP's Rules (Rule 7 – Novation of Obligations, Netting, Settlement and Deliveries) currently provide that trades are novated at the time when the transaction is accepted or deemed to be accepted by EuroCCP from an approved trading facility ("**Approved Facility**"). Trades are accepted based upon trade validation criteria (such as, for example, that the security is eligible for processing in EuroCCP's system). At the time of novation, EuroCCP becomes the central counterparty to the trade, interposing itself between the Participant buyer and seller and effectively guaranteeing the settlement of that transaction.

Concerns have been expressed about the possibility of a trade submission delay, whether due to a communications outage or otherwise, and the impact of such an event on the timing of EuroCCP's trade guarantee. EuroCCP is therefore proposing to modify its Rules to clarify its intention that it will accept all transactions executed on an Approved Facility, provided that they meet EuroCCP's trade validation criteria and the additional conditions described below.

Proposed Change:

The proposed change would modify Rule 7, via the addition of new clarifying text. The proposed change provides that each transaction effected on an Approved Facility will be deemed to be accepted by EuroCCP with effect from the time of the trade, provided that:

- the transaction satisfies EuroCCP's requirements for validation and acceptance of transactions in force and applied by EuroCCP at the time that the transaction is effected (which time is referred to as the "**Time of Trade**");
- the trade data is received by EuroCCP prior to the close of business on the business day in which the transaction is effected (which time is referred to as the "**Cut-off Time**");
- EuroCCP has not, prior to the time of trade, notified the Approved Facility that it will not accept trades (i) from a Participant or Non-Clearing Firm that is a party to, or responsible for, the transaction, and/or (ii) in relation to the Eligible Instrument that is the subject of the transaction; and
- the transaction is not validly cancelled before the earlier of (i) the Cut-off Time and (ii) the time at which the trade data in respect of the transaction is received by EuroCCP.

The intention of this change is to make clear that EuroCCP will guarantee trades (subject to satisfaction of the conditions) for which its Participants are responsible with effect from the Time of Trade.

The proposed change is without prejudice to any of EuroCCP's rights under its Rules in respect of Accepted Trades and transactions submitted to EuroCCP, including Section 3 of Rule 12 (Default Rules and Procedures on Ceasing to Act for a Participant – Action by the Corporation). Nor shall it limit EuroCCP's general discretion to validate and accept a transaction, notwithstanding that the transaction does not satisfy the conditions set out above.

Potential Changes to the Settlement Finality Directive

Participants have been notified previously that EuroCCP's Procedure VII on Settlement Finality has been submitted to the Financial Services Authority in connection with EuroCCP's application for designation under the Settlement Finality Directive and that it may, as a consequence, be subject to changes to reflect the outcome of discussions between EuroCCP and the FSA. Such changes may include consequential changes to the procedure to reflect the amendment to Rule 7 set out in this consultation paper. EuroCCP shall notify Participants of any such changes to Procedure VII.

Assessment of the Likely Costs and Benefits of the Proposed Rule Change:

EuroCCP does not perceive that there will be any costs to Participants or to their Non-Clearing Firms ("NCF's") associated with the proposed Rule change. Rather, EuroCCP believes that Participants and their NCF's will benefit by the additional assurance that potential trade submission delays will not impact EuroCCP's trade guarantee.

Comments and Questions on the Proposed Rule Change:

Participants are invited to comment on the proposal. Written comments may be addressed to Linda Lamonica, Assistant Secretary, at Llamonica@dtcc.com, and should be submitted by no later than close of business December 9th 2008. Questions with respect to the proposed rule change may be addressed to Michael Thomas, EuroCCP Director of Compliance, at mthomas1@dtcc.com (+44 (0) 20 7650 1450).

Participants should note that EuroCCP will also notify the FSA of this proposed Rule change and that the text of the Rule change may be amended further by EuroCCP in response to any comments received from the FSA.

Effectiveness:

EuroCCP intends implement the proposed change as soon as practicable after the comment period ends. Participants will be advised of the effectiveness of the Rule change (including any modifications made as a result of comments received from Participants or the FSA) via issuance of a subsequent EuroCCP Important Notice.

Exhibits:

Text of the proposed change to EuroCCP's Rule 7.

European Central Counterparty Limited

BY: Merrie Faye Witkin
Company Secretary and Counsel

Exhibit A

TEXT OF PROPOSED CHANGES TO EuroCCP's RULES

Underlined text indicates additions to EuroCCP's Rules.

~~[Strikethrough and Bracketed]~~ text indicates deletions to EuroCCP's Rules.

RULE 7 – NOVATION OF OBLIGATIONS, NETTING, SETTLEMENT AND DELIVERIES

1. SECTION 1: NOVATION OF TRANSACTIONS

- 1.1 Each transaction included in a Trade Status Report shall be novated as provided in Section 1.3 at the time when the transaction is ~~[validated and]~~accepted or deemed to be accepted by the Corporation (the "**Time of Novation**"). A transaction which has been novated under this Section 1.1 is referred to in these rules as an "**Accepted Trade**".
- 1.2 If notice of cancellation of an Accepted Trade (the "**Original Transaction**") is received by the Corporation from the relevant Approved Entity prior to the cut-off time specified by the Corporation and is shown as cancelled on a Report then, at the time when the Report is issued to Participants, the Novation in respect of the Original Transaction shall be reversed unless an Insolvency Event has occurred in relation to an original party. Similarly, if the Corporation receives notice of a correction (if applicable in the relevant market) of an Accepted Trade from the Approved Entity prior to such specified cut-off time or the Corporation, pursuant to its authority under Rule 6, makes a correction to avoid an error, and the details of such correction are indicated on a Report then, at the time the Report is issued to Participants, the Novation in respect of the Original Transaction shall be reversed and replaced with a novated transaction reflecting the terms of such transaction as appropriately adjusted by the correction. Accordingly, if an Original Transaction is reported as cancelled or corrected, that Original Transaction shall be treated as if it had never been accepted and novated under this Section 1 and, if an Original Transaction is corrected, it shall be treated as if it had always been in the form as corrected.
- 1.3 At the Time of Novation:
- (a) each Participant which is party to a transaction novated under Section 1.1 shall be released from its obligation to deliver securities or make payments (as the case may be) and its rights against the other in respect of the corresponding payment or deliver obligation owed to it shall cease to exist (being the "**Discharged Rights and Obligations**");
 - (b) the Participant which was the seller under the transaction so novated shall (acting as principal) acquire rights against, and assume obligations towards, the Corporation exactly equivalent to the Discharged Rights and Obligations but with the substitution of the Corporation (acting as principal) in place of the original buyer;
 - (c) the Participant which was the buyer under the transaction so novated shall (acting as principal) acquire rights against, and assume obligations towards, the Corporation

exactly equivalent to the Discharged Rights and Obligations but with the substitution of the Corporation (acting as principal) in place of the original seller.

- 1.4 To the extent that the rights and obligations of each party to a transaction are not novated as described under Section 1.3, those rights and obligations shall continue in force and between those parties.
- 1.5 The obligations assumed by the Corporation under Section 1.3 as a counterparty to a Participant shall take effect subject to these Rules in all respects, including, without limitation, all restrictions on the Corporation's obligations and liabilities contained in these Rules.
- 1.6 If and to the extent that the terms of any transaction or any Participant's accounting or other records, forms, correspondence or telephone or other statements, are or purport to be inconsistent with the terms of these Rules, the terms of these Rules shall prevail.

SECTION 1A: COMMITMENT AT TIME OF TRADE

1.7 Each transaction effected on an Approved Facility shall be deemed to be accepted by the Corporation for the purposes of Section 1.1 of this Rule subject to the following conditions:

- (a) the transaction satisfies the requirements of the Corporation for validation and acceptance of transactions in force and applied by the Corporation at the time that the transaction is effected (the "Time of Trade"); and
- (b) the trade data in respect of the transaction is received by the Corporation prior to the Close of Business on the Business Day in which the transaction is effected (the "Cut-off Time"); and
- (c) the Corporation has not, prior to the Time of Trade, notified the Approved Facility that it will not accept trades:
 - (i) from a Participant or Non-Clearing Firm that is a party to, or responsible for, the transaction; and/or
 - (ii) in relation to the Eligible Instrument that is the subject of the transaction; and
- (d) the transaction is not cancelled pursuant to Section 1.8 of this Rule 7.

If all of the above conditions are satisfied, such deemed acceptance, and the consequent Novation in respect of the transaction concerned pursuant to Section 1.3 of this Rule 7, shall take effect as from the Time of Trade.

1.8 A transaction effected on an Approved Facility shall be cancelled for the purposes of Section 1A of this Rule 7 if:

- (a) the Corporation receives from an Approved Entity, prior to the earlier of:
 - (i) the Cut-off Time; and
 - (ii) the time at which the trade data in respect of the transaction is received by the Corporation.

a valid cancellation instruction submitted by an Approved Entity in accordance with Section 4.1 of Rule 6; and

(b) at the time that the cancellation instruction was submitted by the Approved Entity, an Insolvency Event had not occurred in relation to a Participant or Non-Clearing Firm that is a party to the transaction; and

(c) the Corporation determines, in accordance with Section 4.2 of Rule 6, that the appropriate action in respect of such transaction is to cancel the data submitted in respect of that transaction.

1.9 Sections 1.7 and 1.8 of this Rule 7 are without prejudice to any other right of the Corporation pursuant to these Rules in respect of Accepted Trades and transactions submitted to the Corporation, including, without limitation, the Corporation's rights pursuant to Section 2.2 of Rule 6, Section 1.2 of Rule 7 and Section 3 of Rule 12.

1.10 Nothing in this Section 1A of this Rule 7 shall fetter the Corporation's discretion to validate and accept a transaction in accordance with Section 1.1 of Rule 7, notwithstanding that such transaction does not satisfy the conditions in Section 1.7 of this Rule 7

The remainder of Rule 7 is unchanged