EXPLANATORY MEMORANDUM TO

THE STAMP DUTY AND STAMP DUTY RESERVE TAX (EUROPEAN MULTILATERAL CLEARING FACILITY N.V.) REGULATIONS 2011

2011 No. 668

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These regulations remove multiple charges to stamp duty and stamp duty reserve tax ("SDRT") from transactions made on a regulated market, a multilateral trading facility or over the counter and which are transferred through certain recognised clearing houses (also known as central counterparties), their members and their nominees. These regulations ensure that stamp charges are only paid once, as intended, by the ultimate purchaser.

2.2 In these regulations the recognised clearing house is European Multilateral Clearing Facility N.V. ("EMCF").

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 The regulations, and those relating to Eurex Clearing AG, European Central Counterparty Limited, LCH.Clearnet Limited and SIX X-CLEAR AG, replace regulations currently in force which ensure that stamp charges are paid only once by the ultimate purchaser. A further set of regulations has been laid which provides for these existing regulations to be revoked.

4. Legislative Context

4.1 When shares in UK companies are traded on a regulated market, a multilateral trading facility or over the counter, the use of a central counterparty (CCP) to clear and settle the transactions will involve a number of transfers of those shares, each of which is potentially chargeable to stamp duty or SDRT.

4.2 Sections 116 and 117 of the Finance Act 1991 permit the Treasury to make regulations to remove such multiple charges in respect of what is essentially a single sale and purchase. These regulations will ensure that multiple charges to stamp duty or SDRT will not arise when shares are transferred between non-clearing and clearing members of EMCF and between prescribed recognised clearing houses.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 EMCF is recognised by the Financial Services Authority to be a Recognised Overseas Clearing House under the Financial Services and Markets Act 2000. As such, it is a CCP. The interposition of a CCP between the ultimate seller and the ultimate purchaser in share trades result in a chain of transfers of securities each of which potentially attracts a charge to stamp duty or SDRT.

7.2 These regulations will maintain liquidity in the securities markets by continuing to ensure that multiple charges to stamp duty and SDRT do not arise in respect of what is essentially a single transaction.

7.3 Existing regulations, to be revoked, apply by reference to the exchanges themselves – and therefore have to be revised every time an exchange appoints a new CCP. These new regulations provide a more efficient method of removing the multiple charges as they apply by reference to the CCP itself, for whichever exchange it provides its services.

- ***Consolidation***

7.4 Not applicable.

8. Consultation outcome

8.1 This instrument followed a request from the industry for improvements in the method of removing the multiple charges. The wording of the regulations has been agreed, following consultation, with representatives from the clearing houses that carry out these services and the regulated markets and multilateral trading facilities for which these services are provided

9. Guidance

9.1 No HM Revenue & Customs guidance or other form of publicity is regarded as necessary, beyond the publication of the new instrument.

10. Impact

10.1 There will be savings to the CCPs and exchanges as the new regulations for the CCPs will ensure that fewer amendments to the regulations are required and that newly launched exchanges will, generally, no longer require specific regulations.

10.2 The new approach to the regulations will also provide cost savings for the public sector for the same reasons.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 HM Revenue & Customs will monitor the practical application of the new regulations.

13. Contact

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