STATUTORY INSTRUMENTS

2009 No. 3088

STAMP DUTY

STAMP DUTY RESERVE TAX

The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Over the Counter) Regulations 2009

Made - - - -	*25th November 2009*
Laid before the House of Commons	*26th November 2009*
Coming into force - -	*18th December 2009*

The Treasury make the following Regulations in exercise of the powers conferred on them by sections 116 and 117 of the Finance Act 1991(**a**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Over the Counter) Regulations 2009 and shall come into force on 18th December 2009.

(2) These Regulations shall have effect—

(a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 18th December 2009;

(b) for the purposes of the charge to stamp duty reserve tax—

(i) in the case of agreements to transfer traded securities which are not conditional, in relation to agreements made on or after 18th December 2009;

(ii) in the case of agreements to transfer traded securities which are conditional, in relation to agreements where the condition is satisfied on or after that date.

Interpretation

2. In these Regulations—

"clearing participant" means a member of EuroCCP who as such is permitted by the Rules of EuroCCP to clear transactions made over the counter for a traded security;

"client" means a person who gives instructions to a non-clearing firm for traded securities to be sold or transferred over-the-counter;

(**a**) 1991 c. 31. Section 116(4) was amended by paragraph 5 of Schedule 20 to the Financial Services and Markets Act 2000 (c. 8) and by paragraph 7 of Schedule 21 to the Finance Act 2007 (c. 11).

the "Directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004(**a**) on markets in financial instruments, as amended from time to time;

"EuroCCP" means European Central Counterparty Limited, a body corporate which is a recognised clearing house under the Financial Services and Markets Act 2000(**b**);

"nominee" means a person whose business is or includes holding traded securities as a nominee for EuroCCP acting in its capacity as a person providing clearing services in connection with a transaction made over the counter, or as a nominee for a clearing participant, non-clearing firm or client (as the case may be);

"non-clearing firm" means any person who uses a clearing participant for the purpose of clearing over the counter transactions in traded securities through EuroCCP;

"over the counter" means a transaction in traded securities made other than on a recognised investment exchange;

"recognised investment exchange" means a recognised investment exchange within the meaning of the Financial Services and Markets Act 2000, a regulated market within the meaning of the Directive or a multilateral trading facility within the meaning of the Directive; and

"traded securities" means stocks and shares which are issued or raised by a body corporate but does not include stocks and shares issued by a body corporate not incorporated in the United Kingdom unless—

(a) the stocks and shares are registered in a register kept in the United Kingdom by or on behalf of the body corporate; or

(b) in the case of shares, they are paired, within the meaning of section 99(6A) of the Finance Act 1986(**c**), with shares issued by a body corporate incorporated in the United Kingdom.

Prescription of recognised clearing house

3. For the purposes of sections 116 and 117 of the Finance Act 1991 EuroCCP is prescribed as a recognised clearing house.

Prescribed circumstances for the purposes of sections 116 and 117

4.—(1) In the circumstances prescribed by paragraph (2) below, the charge to stamp duty and the charge to stamp duty reserve tax shall be treated as not arising.

(2) The circumstances prescribed are where, in connection with a transaction made over the counter, conditions A and B are met.

(3) Condition A is that traded securities of a particular kind are transferred, or agreed to be transferred, from—

(a) a clearing participant or a nominee of a clearing participant to another clearing participant or nominee,

(b) a non-clearing firm or its client (or a nominee of a non-clearing firm or of a client of a non-clearing firm) to a clearing participant or a nominee of a clearing participant,

(c) a clearing participant or a nominee of a clearing participant to EuroCCP or to a nominee of that clearing house,

(d) a person other than a clearing participant to EuroCCP or to a nominee of that clearing house, as a result of a failure by a clearing participant to fulfil his obligations in respect of

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(**a**) The definition of "the Directive" was inserted by the Finance Act 2007 (c.11), Schedule 21, paragraph 7(1) and (2) and the expression means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended from time to time (OJ L 145, 30.4.2004).

(**b**) 2000 c. 8.

(**c**) 1986 c. 41. Subsection (6A) was inserted by section 144 of the Finance Act 1988 (c. 39), and was amended by section 113(2) of the Finance Act 1990 (c. 29). The whole of Part 4 of the 1986 Act is to be repealed from a date to be appointed (see sections 110 and 111(1) of the 1990 Act).

the transaction concerned to transfer traded securities to EuroCCP or to a nominee of that clearing house, or

(e) EuroCCP or a nominee of that clearing house to a clearing participant or a nominee of a clearing participant.

(4) Condition B is that the person to whom those securities are agreed to be transferred under any of the agreements specified in paragraph (3) above ("the relevant agreement") is required on receipt of those securities to transfer traded securities under a matching agreement, or matching agreements, to another person or, in the case of an agreement falling within sub-paragraph (d), would have been so required if the failure referred to in that sub-paragraph had not occurred.

(5) In this regulation—

(a) "matching agreement or matching agreements" means an agreement or agreements under which—

(i) the traded securities agreed to be transferred are of the same kind as the traded securities agreed to be transferred under the relevant agreement, and

(ii) the number and transfer price of the traded securities agreed to be transferred are in total identical to the number and transfer price of the traded securities agreed to be transferred under the relevant agreement;

(b) references to EuroCCP are references to that clearing house in its capacity as a person providing clearing services in connection with a transaction made over the counter;

(c) references to a clearing participant are references to a clearing participant in his capacity as such.

Consequential provision

5.—(1) Traded securities which are the subject of an agreement specified in regulation 4(3) shall be dealt with by a clearing participant who is a party to the agreement in a separate designated account, and not otherwise.

(2) In paragraph (1) "designated account" means an account designated by EuroCCP for a clearing participant in connection with the traded securities concerned.

Frank Roy
Steve McCabe

25th November 2009 — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations exempt from stamp duty and stamp duty reserve tax ("SDRT") certain transfers of, or agreements to transfer, traded securities made in the course of trading in those securities over the counter. Over the counter transactions are those that may have been made by two persons directly (whether or not through brokers) or arranged on behalf of the buyer and seller of the traded securities (whether or not on an anonymous basis). An over the counter transaction will not have been made on a recognised investment exchange and will not have been made in accordance with the rules of any recognised investment exchange.

The transfers and agreements exempted by the Regulations are those involving European Central Counterparty Limited ("EuroCCP") (and nominees of that clearing house), through whom transactions are cleared, or clearing participants in EuroCCP (and their nominees).

Regulation 1 provides for citation, commencement and effect and regulation 2 contains definitions.

Regulation 3 prescribes EuroCCP as a recognised clearing house for the purpose of the exemption.

Regulation 4 prescribes the circumstances in which stamp duty and SDRT will not be charged.

Regulation 5 makes consequential provision requiring traded securities which are agreed to be transferred in the prescribed circumstances to be dealt with in a separate designated account.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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