EXPLANATORY MEMORANDUM TO

THE STAMP DUTY AND STAMP DUTY RESERVE TAX (INVESTMENT EXCHANGES AND CLEARING HOUSES) REGULATIONS (NO. 3) 2009

2009 No. 397

1. Introduction

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

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

2. Purpose of the Statutory Instrument

2.1 This Statutory Instrument (SI) contains regulations that remove the charge to Stamp Duty or Stamp Duty Reserve Tax (SDRT) when, as a result of the execution of trades on NYSE Arca Europe, shares in UK companies are transferred between clearing members of European Central Counterparty Ltd (EuroCCP), by non-clearing members (or their nominees) to clearing members, and to or from EuroCCP itself. The NSYE Arca Europe multilateral trading facility is prescribed by the regulations as a recognised investment exchange, and EuroCCP is similarly prescribed as a recognised clearing house. The regulations will apply to instruments executed to give effect to share transfers that take place on or after 23rd March 2009, to electronic transfers that take place on or after 23rd March 2009 and to conditional agreements where the condition is satisfied on or after that date.

2.2 The aim is to exempt EuroCCP and NYSE Arca Europe from Stamp Duty and SDRT on transaction effected through the two parties acting as central clearing house and recognised investment exchange respectively operating as a central counterparty in its own right.

3. Matters of Special Interest to the Select Committee on Statutory Instruments

None

4. Legislative Context

4.1 Sections 116 and 117 of the Finance Act 1991 enable the Treasury to make regulations in relation to recognised investment exchanges and their members, and recognised clearing houses and their nominees.

4.2 The definition of a "recognised investment exchange" now includes regulated markets and multilateral trading facilities within the meaning of

Directive 200/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

4.3 The shares so traded, and the relevant options and derivatives, will involve a number of transfers of those shares each of which is potentially chargeable to Stamp Duty or SDRT.

4.4 These regulations will ensure that multiple charges to Stamp Duty or SDRT will not arise when shares are transferred between non-clearing members or when passing through NYSE Arca Europe or EuroCCP.

4.5 Regulations under these sections have been made previously, specifically: SI 1995/2051, SI 1997/2429, SI 1999/3262, SI 2000/2995, SI 2001/255, SI 2004/3218, SI 2007/1097, SI 2008/52, SI 2008/164, SI 2008/1814, SI 2008/2777 and SI 2008/3235.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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 The parent Act, Finance ACT 1991, provides for investment exchanges and clearing houses to be prescribed by the making of regulations to exclude them from Stamp Duty and Stamp Duty Reserve Tax charges within defined circumstances (Sections 116 and 117 FA 1991).

7.2 The instrument removes multiple charges to Stamp Duty or SDRT from NYSE Arca Europe and EuroCCP acting as a recognised investment exchange and recognised clearing house respectively. The regulations may aid liquidity in the securities market and foster competition.

7.3 Public interest is likely to be minimal. Interest in the financial industry will be greater and some specialist press coverage exists.

7.4 The change is not seen as politically or legally important.

- ***Consolidation***

7.5 None.

8. **Consultation Outcome**

No consultation has been undertaken in relation to this specific matter.

9. **Guidance**

No guidance over and above the publication of the Statutory Instrument is anticipated as it relates to a specific business and any publicity relating to the Instrument's purpose will rest with that business.

10. **Impact**

10.1 There is no impact upon wider business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An impact assessment has not been prepared for this instrument.

11. **Regulating Small Business**

The instrument does not apply to small business.

12. **Monitoring and Review**

None specifically required in relation to the purpose of the Instrument. Reviews of compliance by NYSEAE and EuroCCP with their obligations as regulated investment exchange and recognised clearing house will form part of the compliance review programme of the Excise, Stamps and Money Businesses Directorate of HMRC. EuroCCP already acts as a recognised clearing house for Turquoise Multilateral Trading Facility (SI 2008/1814).

13. **Contact**

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