



## MEDIA RELEASE

27 January 2021

### **CCCS Consults on Proposed Commitments by London Stock Exchange Group plc in relation to the Proposed Acquisition of Refinitiv Holdings Limited**

The Competition and Consumer Commission of Singapore (“**CCCS**”) is inviting public feedback from 27 January 2021 to 9 February 2021 on commitments proposed by London Stock Exchange Group plc (“**LSEG**”) to address competition concerns identified by CCCS in relation to the proposed acquisition by LSEG of sole control over Refinitiv Holdings Limited (“**Refinitiv**”) (collectively, the “**Parties**”) (the “**Proposed Transaction**”).

#### **Background**

2. Following CCCS’s Phase 1 review which concluded on 2 July 2020, competition concerns were raised on the Proposed Transaction based on the information received from the Parties and third parties. CCCS proceeded to an in-depth Phase 2 review on 31 August 2020 to further assess the effect of the Proposed Transaction in view of the concerns raised.<sup>1</sup>

3. Based on feedback from third parties<sup>2</sup>, CCCS is concerned that the Proposed Transaction will reduce the incentive for the merged entity to continue the supply of Refinitiv’s WM/Reuters foreign exchange benchmarks (“**WM/R FX benchmarks**”) which are critical inputs to competing providers of index licensing and derivatives clearing services. This is because, as a result of the Proposed Transaction, Refinitiv

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<sup>1</sup> For more information on the Phase 1 review, please refer to [CCCS’s media release dated 2 July 2020](#). For more information on the Phase 2 review, please refer to [CCCS’s media release dated 16 September 2020](#).

<sup>2</sup> Third parties have raised concerns about continued access to WM/R FX benchmarks, which are considered critical inputs for index licensing and derivatives clearing services. Feedback suggests that WM/R FX benchmarks are considered the industry benchmark for foreign exchange reference rates and there is no reasonable substitute that rival providers and derivatives clearing service providers can switch to without incurring significant disruption and costs to their businesses.

would be merged or affiliated to a major clearing provider (i.e. LCH Group<sup>3</sup>) as well as a major index licensing provider (i.e. FTSE Russell<sup>4</sup>) with global presence.

4. To address these competition concerns, LSEG proposed commitments to make WM/R benchmarks available to all existing and future (a) customers for the purposes of providing index licensing services<sup>5</sup>; and (b) clearing houses<sup>6</sup> for providing clearing services, in Singapore (collectively, “**WM/R Customers**”) (“**Proposed Commitments**”).

5. The Proposed Commitments include commitments (a) to ensure that the pricing and other commercial terms that are applied to WM/R FX benchmarks shall not be changed in such a way as to constitute a de facto failure to make WM/R FX benchmarks available to WM/R Customers; (b) not to reclassify or redefine WM/R FX benchmarks in a manner that would undermine the efficacy of the Proposed Commitments; and (c) to deal with WM/R Customers in relation to any future contracts regarding access to WM/R FX benchmarks for index licensing or clearing purposes in good faith.

6. LSEG has proposed a commitment period of ten years from the date of CCCS’s final decision on the Proposed Transaction, during which the Proposed Commitments will be in effect. A Monitoring Trustee will be appointed to monitor compliance with the commitments, including to assess all complaints regarding a potential breach of the commitments.<sup>7</sup>

## **Public Consultation**

7. CCCS is inviting feedback on the Proposed Commitments at **Annex 1** to assist with its assessment of whether the Proposed Commitments will sufficiently address the competition concerns arising from the Proposed Transaction. The closing date for submissions is 12.00 pm on 9 February 2021. If the submission/correspondence contains confidential information, please also provide CCCS with a non-confidential version of the submission or correspondence. CCCS will issue its decision relating to

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<sup>3</sup> LSEG has a majority ownership interest in LCH Group, a holding company of two separate multi-asset class global clearing house operators with an open access model (i.e. LCH Ltd and LCH SA).

<sup>4</sup> FTSE Russell is a wholly owned subsidiary of LSEG which supplies over approximately 250,000 indices, which are grouped into more than 200 index families, based on different exposures such as geographies, sectors, and asset classes, and other classifications such as size and style.

<sup>5</sup> The index licensing providers refer to those which provide index licensing services from Singapore for users globally; or to users resident in or operating a business in Singapore.

<sup>6</sup> The clearing houses have to be approved or recognised by Monetary Authority of Singapore under Section 51(1)(a) or Section 51(1)(b) of the Securities and Futures Act, Chapter 289 of Singapore.

<sup>7</sup> Aside from the complaint channel, there is a fast-track dispute resolution mechanism, which is an additional option for complainants to seek recourse under the Proposed Commitments, failing which the complainant may request arbitration.

the Proposed Transaction, alongside with its decision on the Proposed Commitments, following the public consultation.

8. More information on the Proposed Transaction can be accessed from the CCCS website at [www.cccs.gov.sg](http://www.cccs.gov.sg) under the section "[Public Consultation](#)".

9. For more information on the merger review process in Singapore, please refer to **Annex 2**.

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### **About the Competition and Consumer Commission of Singapore**

The Competition and Consumer Commission of Singapore ("**CCCS**") is a statutory board of the Ministry of Trade and Industry. CCCS administers and enforces the Competition Act (Cap. 50B) which empowers CCCS to investigate and adjudicate anti-competitive activities, issue directions to stop and/or prevent anti-competitive activities and impose financial penalties. CCCS is also the administering agency of the Consumer Protection (Fair Trading) Act (Cap. 52A) or CPFTA which protects consumers against unfair trade practices in Singapore. Our mission is to make markets work well to create opportunities and choices for business and consumers in Singapore.

For more information, please visit [www.cccs.gov.sg](http://www.cccs.gov.sg).

#### **For media clarifications, please contact:**

Ms. Grace Suen  
Senior Assistant Director  
Communications  
Competition and Consumer Commission of Singapore  
Email: [grace\\_suen@cccs.gov.sg](mailto:grace_suen@cccs.gov.sg)

Ms. Nawwar Syahirah  
Senior Assistant Director  
Communications  
Competition and Consumer Commission of Singapore  
Email: [nawwar\\_syahirah@cccs.gov.sg](mailto:nawwar_syahirah@cccs.gov.sg)

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**DRAFT PROPOSAL ON THE COMMITMENT TO THE  
COMPETITION AND CONSUMER COMMISSION OF  
SINGAPORE**

Allen & Gledhill LLP  
One Marina Boulevard #28-00 Singapore 018989  
Tel: +65 6890 7188 | Fax +65 6327 3800

[allenandgledhill.com](http://allenandgledhill.com)

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**Draft Proposal on the Commitment to the Competition and Consumer Commission of  
Singapore**

**1. Introduction**

**1.1** Pursuant to paragraph 6.8 of the CCCS Guidelines on Merger Procedures 2012, and the letter from the CCCS dated 2 July 2020 (the “**Issues Letter**”) in connection with the proposed acquisition by LSEG of sole control over the Refinitiv business (the “**Transaction**”), LSEG hereby enters into the commitment set out in paragraph 3.1 below (“**Commitment**”) with the CCCS in order to enable the CCCS to make a decision, pursuant to Section 60A of the Competition Act, Chapter 50B of Singapore (the “**Act**”) that the Transaction, if carried into effect, will not infringe Section 54 of the Act.

**1.2** LSEG enters into the following Commitment with the CCCS with the objective of assuring the CCCS that the Transaction would not result in a substantial lessening of competition in Singapore, notwithstanding that LSEG does not agree with the issues identified by the CCCS in the Issues Letter.

**1.3** LSEG will use all reasonable endeavours to ensure the satisfaction of the Commitment set out below provided that this shall not give rise to an obligation on LSEG to take such action which would, or would be likely to, have such a detrimental effect on the current or future development of LSEG, and/or its respective related entities. LSEG reserves the right, at any time during the Commitment Period, if it considers that any action is likely to have such a detrimental effect on the current or future development of LSEG and/or its respective related entities, to make an application, supported by reasons, to the CCCS as set out in paragraph 6.2 below.

**2. Definitions**

**2.1** In the following Commitment, unless the subject or context otherwise requires, the following words, expressions and abbreviations have the following meanings ascribed to them:

**2.1.1** “**Act**” shall have the meaning as ascribed to it in paragraph 1.1 above;

**2.1.2** “**Affiliated Undertakings**” means undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to the CCCS Guidelines on Substantive Assessment of Mergers 2016;

**2.1.3** “**Answer**” shall have the meaning as ascribed to it in paragraph 1.6 of Schedule 2;

**2.1.4** “**Arbitral Institution**” shall have the meaning as ascribed to it in paragraph 1.4 of Schedule 2;

**2.1.5** “**Best efforts**” shall be interpreted in light of the CCCS’s Decision and the Act. Any interpretation that may be given to this term under the law of other jurisdictions is not relevant solely for the purpose of interpreting and/or implementing the Commitment;

**2.1.6** “**CCCS**” means the Competition and Consumer Commission of Singapore;

**2.1.7** “**Closing**” means closing of the Transaction whereby LSEG acquires sole control of Refinitiv;

**2.1.8** “**Combined Entity**” means LSEG after Closing of the Transaction;

**2.1.9** “**Complainant**” means any WM/R Customer which has submitted a written complaint that LSEG is not complying with the Commitment;

- 2.1.10 “**Commitment Period**” means ten years from the Effective Date or Closing, whichever is later;
- 2.1.11 “**Commitment**” shall have the meaning as ascribed to it in paragraph 1.1 above;
- 2.1.12 “**Confidential Information**” means any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain;
- 2.1.13 “**Conflict of Interest**” means any conflict of interest that could impair the Monitoring Trustee’s objectivity and independence in discharging its duties under the Commitment;
- 2.1.14 “**De Facto Failure**” means an excessive change in pricing terms or other change in commercial terms (including the introduction of new use cases) which amounts to a failure by the Combined Entity to supply WM/R FX Benchmarks to WM/R Customers, as applicable in paragraph 3.1. In determining whether there has been an excessive change in pricing terms or other commercial terms (including the introduction of new use cases) such as to amount to such a failure to supply WM/R FX Benchmarks, all relevant factors shall be taken into account, which shall include (to the extent relevant in any given case):
- (i) the price or terms (or change in price or terms) offered by Refinitiv to WM/R Customers immediately prior to Closing (taking into account applicable measures of inflation since the Closing, with reference to the OECD Major 7 CPI); and/or
  - (ii) the price or terms (or change in price or terms) offered by the Combined Entity to other WM/R Customers, at the relevant time; and/or
  - (iii) the prices and terms of comparable offerings by other providers in a comparable situation with respect to comparable customers at the relevant time, to the extent such comparators exist (such as but not limited to the scope of the license (e.g. the types of use cases, the number of territories which the license extends to)); having regard, in particular, to the quality and commercial proposition – in isolation or in combination with other products and services – and customer usage of such offerings.
- 2.1.15 “**Decision**” means a favourable decision by the CCCS that the Transaction will not, if carried into effect, infringe Section 54 of the Act;
- 2.1.16 “**Dispute**” shall have the meaning as ascribed to it in paragraph 1.5 of Schedule 2;
- 2.1.17 “**Effective Date**” means the date of adoption of the Decision;
- 2.1.18 “**ICC**” shall have the meaning as ascribed to it in paragraph 1.4 of Schedule 2;
- 2.1.19 “**Indemnified Party**” shall have the meaning as ascribed to it in paragraph 3.3 of Schedule 1;
- 2.1.20 “**Issues Letter**” shall have the meaning as ascribed to it in paragraph 1.1 above;
- 2.1.21 “**LSEG**” means the London Stock Exchange Group plc.;
- 2.1.22 “**Monitoring Trustee**” means one or more natural or legal person(s) who is/are approved by the CCCS and appointed by LSEG, and who has/have the duty to monitor LSEG’s compliance with the conditions and obligations attached to the Decision;

- 2.1.23 “**Notice**” shall have the meaning as ascribed to it in paragraph 1.4 of Schedule 2;
- 2.1.24 “**OECD Major 7 CPI**” means the all item consumer prices index series for the G7 as a whole as reported by the Organisation for Economic Cooperation and Development, or any equivalent successor inflation index published by the Organisation for Economic Co-operation and Development. The G7 is comprised of: Canada, France, Germany, Italy, Japan, United Kingdom and United States;
- 2.1.25 “**Parties to the Arbitration**” shall have the meaning as ascribed to it in paragraph 1.4 of Schedule 2;
- 2.1.26 “**Refinitiv**” means the Refinitiv business which, after Closing, shall be controlled by LSEG;
- 2.1.27 “**Rules**” shall have the meaning as ascribed to it in paragraph 3.1 of Schedule 2;
- 2.1.28 “**Transaction**” shall have the meaning as ascribed to it in paragraph 1.1 above;
- 2.1.29 “**Trustee Proposal**” shall have the meaning as ascribed to it in paragraph 1.2 of Schedule 2;
- 2.1.30 “**WM/R Customers**” means:
- (i) all existing and future customers that access or will in the future make a request to access WM/R FX Benchmarks for the purposes of providing index licensing services:
    - (a) from Singapore for users globally; or
    - (b) to users resident in or operating a business in Singapore; and
  - (ii) all existing and future clearing houses approved or recognised by Monetary Authority of Singapore under Section 51(1)(a) or Section 51(1)(b) of the Securities and Futures Act, Chapter 289 of Singapore as an approved clearing house or recognised clearing house respectively, that access or will in the future make a request to access WM/R FX Benchmarks for clearing purposes in Singapore.
- 2.1.31 “**WM/R FX Benchmarks**” means all existing WM/R FX benchmarks/rates offered by Refinitiv as set out in the WM/R Methodology, their successor products and WM/R FX benchmarks/rates of a similar nature offered by the Combined Entity in the future; and
- 2.1.32 “**WM/R Methodology**” means the WM/Reuters FX Benchmarks methodology guide as published on Refinitiv’s website and updated from time to time.

### 3. The Commitment

- 3.1 LSEG – and, during the period between the Effective Date and the date of Closing, Refinitiv – commits to make WM/R FX Benchmarks available to WM/R Customers that currently access or in the future make a request to access WM/R FX Benchmarks for index licensing or clearing purposes. For the avoidance of doubt, this commitment:
- 3.1.1 includes an undertaking to ensure that the pricing and commercial terms that are applied to WM/R FX Benchmarks shall not be changed in such a way as to constitute a *De Facto* Failure to make WM/R FX Benchmarks available to WM/R Customers that



currently access or in the future make a request to access WM/R FX Benchmarks for index licensing or clearing purposes;

**3.1.2** in order to ensure that the Monitoring Trustee is able to verify and address any complaints in respect of LSEG's compliance with this paragraph 3.1, LSEG shall provide relevant evidence in accordance with the reporting periods under paragraph 2.2.4 of Schedule 1 to the Monitoring Trustee of any change to the price of WM/R FX Benchmarks made available to WM/R Customers for index licensing or clearing purposes or the terms on which WM/R FX Benchmarks are made available to WM/R Customers for index licensing or clearing purposes (including the addition of new use cases) and set out the reasons for any such change.

**3.2** LSEG – and, during the period between the Effective Date and the date of Closing, Refinitiv – commits:

**3.2.1** not to reclassify or redefine WM/R FX Benchmarks in a manner that would undermine the efficacy of the Commitment; and

**3.2.2** to deal with WM/R Customers in relation to any future contracts regarding access to WM/R FX Benchmarks for index licensing or clearing purposes in good faith.

#### **4. Monitoring Trustee**

**4.1** LSEG shall appoint a Monitoring Trustee on the terms and conditions approved by the CCCS, and as set out in Schedule 1.

**4.2** The Monitoring Trustee appointed by LSEG pursuant to paragraph 4.1 may be the same as the one appointed by LSEG in relation to the approval by the European Commission of the Transaction under Council Regulation (EC) NO 139/2004, provided that the Monitoring Trustee fulfils the requirements set out in Schedule 1.

**4.3** LSEG shall procure that, following the appointment of the Monitoring Trustee, the Monitoring Trustee shall monitor the compliance of LSEG with the Commitment set out in paragraph 3.1 above, in accordance with the terms of its appointment.

#### **5. Optional Fast-track dispute resolution procedure**

**5.1** In the event that a Complainant has reason to believe that LSEG has failed to comply with its obligations as set out in the Commitment, the fast-track dispute resolution procedure as described in Schedule 2 will apply at the option of the Complainant. Such fast-track dispute resolution mechanism will be an additional option to the benefit of the Complainant and not an obligation for it. LSEG commits not to suspend access to its WM/R FX Benchmarks to the Complainant until the date of the final award of the Arbitral Tribunal or, in case a preliminary ruling is requested, until the date of this preliminary ruling (unless in each case such access suspension is necessary for legal, regulatory and/or risk management reasons or is otherwise permitted pursuant to a determination by the Monitoring Trustee).

#### **6. Term and termination**

**6.1** Subject to paragraph 6.2 below, LSEG shall comply with the Commitment for the Commitment Period.

**6.2** An application by LSEG to the CCCS, in accordance with paragraphs 6.14 to 6.16 of the CCCS Guidelines on Merger Procedures 2012, may be made by LSEG at any time during the Commitment Period to vary, substitute or release LSEG from the Commitment pursuant to Sections 60A(3) and (4) of the Act, and such application must be supported by reasons, including but not limited to:

**6.2.1** any material change in market and competitive conditions; or

**6.2.2** circumstances where compliance with any of the Commitment exceeds the objective set out in paragraph 1.2 above or has such a detrimental effect on the current or future development of LSEG and/or its related affiliates.

**7. Governing Law**

**7.1** The terms and conditions of the Commitment shall be governed by, and construed in accordance with, the laws of Singapore.

**8. Entry into force**

**8.1** The Commitment shall take effect upon the Effective Date.

**Schedule 1**

**Terms and conditions of the appointment of the Monitoring Trustee**

**1. Appointment procedure**

- 1.1** LSEG shall appoint a Monitoring Trustee to carry out the functions specified in the Commitment for a Monitoring Trustee.
- 1.2** The Monitoring Trustee shall:
- 1.2.1** at the time of appointment, be independent of the Parties and their Affiliated Undertakings;
  - 1.2.2** possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience; and
  - 1.2.3** neither have nor become exposed to a Conflict of Interest during the Commitment Period and for one year after the Commitment Period ends.
- 1.3** The Monitoring Trustee shall be remunerated by LSEG in a way that does not impede the independent and effective fulfilment of its mandate.

*Proposal by LSEG*

- 1.4** No later than three weeks after the Effective Date, LSEG shall submit the name or names of one or more natural or legal persons whom LSEG proposes to appoint as the Monitoring Trustee to the CCCS for approval. The proposal shall contain sufficient information for the CCCS to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph 1.2 of this Schedule and shall include:
- 1.4.1** the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under the Commitment; and
  - 1.4.2** the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

*Approval or rejection by the CCCS*

- 1.5** The CCCS shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, LSEG shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the CCCS. If more than one name is approved, LSEG shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the CCCS's approval, in accordance with the mandate approved by the CCCS.

*New proposal by LSEG*

- 1.6 If all the proposed Monitoring Trustees are rejected, LSEG shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 1.1 to 1.5 of this Schedule.

*Trustee nominated by the CCCS*

- 1.7 If all further proposed Trustees are rejected by the CCCS, the CCCS shall nominate a Monitoring Trustee, whom LSEG shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the CCCS.

**2. Functions of the Monitoring Trustee**

- 2.1 The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitment. The CCCS may, on its own initiative or at the request of the Monitoring Trustee or LSEG, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

- 2.2 The Monitoring Trustee shall:

2.2.1 propose in its first report to the CCCS a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

2.2.2 monitor the implementation of and compliance with the Commitment, by LSEG, as set out in paragraph 3.1 above;

2.2.3 propose to LSEG such measures as the Monitoring Trustee considers necessary to ensure LSEG's compliance with the Commitment;

2.2.4 provide to the CCCS, sending LSEG a non-confidential copy at the same time, a written report regarding the compliance by LSEG with the Commitment within 15 days after the end of every reporting period, each period being: (i) one month for the first six months post-Closing; (ii) three months for the remainder of the first two years; (iii) six months in years three and four; and (iv) 12 months for the remainder of the Commitment Period. The CCCS can amend the frequency of these reports after consulting with the Monitoring Trustee;

2.2.5 act as a contact point for any requests by third parties in relation to the Commitment. Specifically, unless any Complainant wishes to avail itself of the optional fast-track dispute resolution procedure in accordance with paragraph 1.1 of Schedule 2, the Monitoring Trustee shall be responsible for assessing all complaints regarding potential breaches of the Commitment (either where details of such are received from the CCCS, or directly from any third party), where it is specified clearly by the Complainant that the complaint relates to the Commitment accepted pursuant to Section 60A of the Act. The Monitoring Trustee shall:

- (i) each time, where a complaint is received from a third party and it is specified clearly by the third party that the complaint relates to the Commitment accepted pursuant to Section 60A of the Act, promptly inform the CCCS in writing and provide a copy of the complaint to the CCCS (and concurrently provide LSEG with a non-confidential copy of the complaint), within three working days of the Monitoring Trustee receiving any complaint;

- (ii) each time promptly inform the CCCS in writing (and concurrently provide LSEG with a non-confidential copy of such), within three working days of the Monitoring Trustee determining that a complaint received pursuant to paragraph 2.2.5 of Schedule 1 is vexatious, frivolous or insufficiently substantiated, and dismisses the complaint. Examples of complaints that shall be deemed vexatious, frivolous or insufficiently substantiated include (but are not limited to) complaints made by a Complainant who is not able to satisfactorily demonstrate to the Monitoring Trustee that:
    - (a) it made its request to access WM/R FX Benchmarks for the purposes of providing index licensing services from Singapore for users globally, or to users resident in or operating a business in Singapore; or
    - (b) it is a clearing house approved or recognised by Monetary Authority of Singapore under Section 51(1)(a) or Section 51(1)(b) of the Securities and Futures Act, Chapter 289 of Singapore, respectively; and
  - (iii) for complaints the Monitoring Trustee does not find vexatious, frivolous or insufficiently substantiated pursuant to paragraph 2.2.5(ii) of Schedule 1, each time within 20 working days of it receiving such complaint (or such longer period of time as the Monitoring Trustee may, subject to the prior consent of the CCCS, reasonably require to effectively consider the complaint), provide:
    - (a) to the CCCS a written report opining whether such complaint discloses non-compliance with the Commitment (such report to include all information relied upon by the Monitoring Trustee, its detailed evaluation and reasoning, and, where non-compliance has been determined, the proposed action to be undertaken by LSEG to resolve the complaint); and
    - (b) to LSEG a non-confidential copy of the report provided to the CCCS;
- 2.2.6** in relation to the optional fast-track dispute resolution procedure outlined in paragraph 5.1 above and Schedule 2, each time promptly inform in writing to the CCCS within three working days of any of the following events occurring:
- (i) the Monitoring Trustee becoming aware of a Complainant wishing to avail itself of the optional fast-track dispute resolution procedure, in accordance with paragraph 1.1 of Schedule 2;
  - (ii) the Monitoring Trustee being requested to facilitate the settlement of the dispute;
  - (iii) the Monitoring Trustee determining that, pursuant to paragraph 1.3 of Schedule 2, a complaint is vexatious, frivolous or insufficiently substantiated, and dismisses the complaint; or
  - (iv) the commencement of arbitration proceedings, in accordance with the Rules; and
- 2.2.7** assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

### 3. Duties and obligations of LSEG

- 3.1 LSEG shall provide and shall cause its advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks.
- 3.2 The Monitoring Trustee shall have full and complete access to any of LSEG's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitment, and LSEG shall provide the Monitoring Trustee upon request with copies of any document. LSEG shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
- 3.3 LSEG shall indemnify the Monitoring Trustee and its employees and agents (each an "Indemnified Party") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to LSEG for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitment, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.
- 3.4 At the expense of LSEG, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to LSEG's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should LSEG refuse to approve the advisors proposed by the Monitoring Trustee the CCCS may approve the appointment of such advisors instead, after having heard LSEG. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 3.3 of this Schedule shall apply *mutatis mutandis*.
- 3.5 LSEG agrees that the CCCS may share Confidential Information proprietary to LSEG with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Section 89(1) of the Act apply *mutatis mutandis*.
- 3.6 LSEG agrees that the contact details of the Monitoring Trustee are published on the CCCS's website and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.
- 3.7 For the duration of the Commitment Period and for up to five years thereafter as is necessary to ascertain that the Commitment has been effectively implemented and complied with during the Commitment Period, the CCCS may request from LSEG, and LSEG shall provide, all information that is reasonably necessary to monitor the effective implementation of, and compliance with, the Commitment during the Commitment Period.

### 4. Replacement, discharge and reappointment of the Monitoring Trustee

- 4.1 If the Monitoring Trustee ceases to perform its functions under the Commitment or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

- 4.1.1** the CCCS may, after hearing the Monitoring Trustee and LSEG, require LSEG to replace the Monitoring Trustee; or
- 4.1.2** LSEG may, with the prior approval of the CCCS, replace the Monitoring Trustee.
- 4.2** If the Monitoring Trustee is removed according to paragraph 4.1 of this Schedule, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 1.1 to 1.7 of this Schedule.
- 4.3** Unless removed according to paragraph 4.1 of this Schedule, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the CCCS has discharged it from its duties after the Commitment with which the Monitoring Trustee has been entrusted has been implemented. However, the CCCS may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

## Schedule 2

## Optional Fast-track dispute resolution procedure

## 1. Optional Fast-track dispute resolution procedure

- 1.1 If the Complainant wishes to avail itself of the fast-track dispute resolution procedure, it shall send a written request to LSEG (with a copy to the Monitoring Trustee) specifying clearly that the complaint relates to the Commitment accepted pursuant to Section 60A of the Act, and setting out in detail the reasons leading that party to believe that LSEG is failing to comply with the requirements of the Commitment. The Complainant and LSEG will use best efforts to resolve all differences of opinion and to settle all disputes that may arise through co-operation and consultation within a reasonable period of time not exceeding 15 working days after receipt of the request.
- 1.2 The Monitoring Trustee shall be prepared, if requested by LSEG or the Complainant, to facilitate the settlement of the dispute and shall present its own proposal (the “**Trustee Proposal**”) for resolving the dispute, specifying in writing the action, if any, to be taken by LSEG in order to ensure compliance with the Commitment vis-à-vis the Complainant within eight working days of LSEG or the Complainant requesting for the Monitoring Trustee to facilitate the settlement of the dispute (or such longer period of time as the Monitoring Trustee may, subject to the prior consent of the CCCS, reasonably require to effectively consider that complaint). A copy of the Trustee Proposal shall be concurrently provided to CCCS. The Monitoring Trustee shall continue to facilitate the settlement of the dispute between the Complainant and LSEG following the submission of the Trustee Proposal for LSEG and the Complainant’s consideration. In the event that LSEG and the Complainant are unable to settle the dispute within 10 working days (or any extended period approved by CCCS) after receipt of the Trustee Proposal, the Monitoring Trustee shall inform CCCS within three working days after the end of the period, for CCCS’s intervention as CCCS deems appropriate. In the event LSEG and the Complainant come to a settlement, following the receipt of the Trustee Proposal, the Monitoring Trustee shall inform CCCS within three working days from the time of the settlement.
- 1.3 The Monitoring Trustee will also have the ability to declare a complaint vexatious, frivolous or insufficiently substantiated, within eight working days of LSEG or the Complainant requesting for the Monitoring Trustee to facilitate the settlement of the dispute (or such longer period of time as the Monitoring Trustee may, subject to the prior consent of the CCCS, reasonably require to effectively consider that complaint), in which case LSEG will not need to comply with the obligations set out in paragraph 5.1 above and paragraph 1.1 of Schedule 2, and the Arbitration process will not be available to the Complainant. Examples of complaints that shall be deemed vexatious, frivolous or insufficiently substantiated include (but are not limited to) complaints made by a Complainant who is not able to satisfactorily demonstrate to the Monitoring Trustee that:
- 1.3.1 it made its request to access WM/R FX Benchmarks for the purposes of providing index licensing services from Singapore for users globally, or to users resident in or operating a business in Singapore; or
- 1.3.2 it is a clearing house approved or recognised by Monetary Authority of Singapore under Section 51(1)(a) or Section 51(1)(b) of the Securities and Futures Act, Chapter 289 of Singapore, respectively.



- 1.4 Without prejudice to paragraphs 1.2 and 1.3 of Schedule 2, should the Complainant and LSEG (together the **"Parties to the Arbitration"**) fail to resolve their differences of opinion in the consultation phase, the Complainant may serve a notice (the **"Notice"**), in the sense of a request for arbitration, to the International Chamber of Commerce (the **"ICC"**) (the **"Arbitral Institution"**), with a copy of such Notice and request for arbitration to LSEG, provided that the reasonable period of time referred to in paragraph 1.1 of Schedule 2 has elapsed and best efforts have been used to resolve the dispute.
- 1.5 The Notice shall set out in detail the dispute, difference or claim (the **"Dispute"**) and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements (without prejudice to the possibility for the Complainant to submit additional evidence and documents during the course of the Arbitration Procedure). The Notice shall also contain a detailed description of the action to be undertaken by LSEG (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.
- 1.6 LSEG shall, within 10 working days from receipt of the Notice, submit its answer (the **"Answer"**), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g. documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which LSEG proposes to undertake vis-à-vis the Complainant (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

## 2. Appointment of the Arbitrators

- 2.1 The Arbitral Tribunal shall consist of three persons. The Complainant shall nominate its arbitrator in the Notice; LSEG shall nominate its arbitrator in the Answer. The arbitrators nominated by the Complainant and by LSEG shall, within five working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three arbitrators.
- 2.2 Should the Complainant wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Notice. In this case, the Complainant and LSEG shall agree on the nomination of a sole arbitrator within five working days from the communication of the Answer, communicating this to the Arbitral Institution.
- 2.3 Should (i) LSEG fail to nominate an arbitrator; (ii) the two arbitrators fail to agree on the chairman; or (iii) the Parties to the Arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution.
- 2.4 The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the Arbitral Tribunal.

## 3. Arbitration Procedure

- 3.1** The Dispute shall be finally resolved by arbitration under the ICC rules, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the “**Rules**”). The Arbitration shall be conducted in London, England in the English language.
- 3.2** The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The Parties to the Arbitration shall consent to the use of e-mail for the exchange of documents.
- 3.3** The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the Parties to the Arbitration. Terms of Reference shall be drawn up and signed by the Parties to the Arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.
- 3.4** In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Parties to the Arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the Parties to the Arbitration agree.
- 3.5** The Arbitral Tribunal shall not disclose Confidential Information and shall apply the standards attributable to Confidential Information under the Act. The Arbitral Tribunal may take the measures necessary for protecting Confidential Information in particular by restricting access to Confidential Information to the Arbitral Tribunal, the Monitoring Trustee, and outside counsel and experts of the opposing party.
- 3.6** The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Complainant must produce evidence of a prima facie case; and (ii) if the Complainant produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Complainant unless LSEG can produce evidence to the contrary.

## **4. Involvement of the CCCS**

- 4.1** The CCCS shall be allowed and enabled to participate in all stages of the procedure by:
- 4.1.1** receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;
  - 4.1.2** receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including Terms of Reference and procedural time-table);
  - 4.1.3** giving the CCCS the opportunity to file amicus curiae briefs; and
  - 4.1.4** being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.
- 4.2** The Arbitral Tribunal shall forward or shall order the Parties to the Arbitration to forward, the documents mentioned to the CCCS without delay.

- 4.3** In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Commitment, the Arbitral Tribunal may seek the CCCS's interpretation of the Commitment (and may be provided at CCCS's discretion) before finding in favour of any Party to the Arbitration and shall be bound by the interpretation.

**5. Decisions of the Arbitral Tribunal**

- 5.1** The Arbitral Tribunal shall take all decisions by majority vote. The Arbitral Tribunal shall decide the Dispute on the basis of the Commitment and the Decision. Issues not covered by the Commitment and the Decision shall be decided by reference to the Act.
- 5.2** Upon request of the Complainant or LSEG, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within one month after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.
- 5.3** The final award shall, as a rule, be rendered within six months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the CCCS takes to submit an interpretation of the Commitment if asked by the Arbitral Tribunal.
- 5.4** The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by LSEG in order to comply with the Commitment vis-à-vis the Complainant. The final award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.
- 5.5** The Parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The CCCS may publish the non-confidential version of the award.
- 5.6** Nothing in the arbitration procedure shall affect the power to the CCCS to take decisions in relation to the Commitment in accordance with its powers under the Act.

## ANNEX 2

### **About the Section 54 Prohibition under the Competition Act & Merger Procedures**

Section 54 of the Competition Act (Cap. 50B) (“the **Act**”) prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition in Singapore. CCCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless:

- The merged entity has/will have a market share of 40% or more; or
- The merged entity has/will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms is 70% or more.

Merging entities are not required to notify CCCS of their merger but they should conduct a self-assessment to ascertain if a notification to CCCS is necessary. If they are concerned that the merger has infringed, or is likely to infringe, the Act, they should notify their merger to CCCS. In such cases, CCCS will assess the effect of the merger on competition and decide if the merger has resulted, or is likely to result, in a substantial lessening of competition (“**SLC**”) in Singapore.

Separately, CCCS has the ability to conduct an investigation into an un-notified merger if there are reasonable grounds for suspecting that the merger infringes section 54 of the Act. In the event CCCS finds that a merger situation has resulted or is expected to result in an SLC, CCCS has powers to give directions to remedy the SLC. For example, CCCS can require the merger to be unwound or modified to address or prevent the SLC, as the case may be. CCCS may also consider issuing interim measures prior to the final determination of the investigation.

### **Phase 1 and Phase 2 Merger Review**

A Phase 1 review entails a quick review and allows merger situations that do not raise competition concerns under the section 54 prohibition to proceed. CCCS expects to complete a Phase 1 review within 30 business days. By the end of this period, CCCS will determine whether to issue a favourable decision and allow the merger situation to proceed. If CCCS is unable, at the end of the 30-day period, to conclude that the merger situation will not result in a substantial lessening of competition, CCCS will inform the merger parties and the merger parties may file further information and supporting documents as listed in Form M2<sup>8</sup>. Upon receipt of Form M2, CCCS will proceed to a Phase 2 review.

A Phase 2 review entails a more detailed and extensive examination of the merger situation. While the principles of substantive assessment are the same, CCCS will

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<sup>8</sup> The form can be accessed at [www.ccs.gov.sg/approach-cccs/notifying-a-merger/filing-a-merger-notification-with-cccs](http://www.ccs.gov.sg/approach-cccs/notifying-a-merger/filing-a-merger-notification-with-cccs).

require access to more extensive and detailed information regarding the merger parties and the markets in question.

As the Phase 2 review is more complex, CCCS will endeavour to complete a Phase 2 review within 120 business days.

### **Commitments**

Section 60A of the Act states that CCCS may, at any time before making a decision as to whether the section 54 prohibition has been or will be infringed, accept commitments that remedy, mitigate or prevent the substantial lessening of competition or any adverse effect arising from the merger situation. Where CCCS has accepted a commitment, CCCS will make a favourable decision.

Further details can be found in the [CCCS Guidelines on Merger Procedures 2012](#).

For more information, please visit [www.cccs.gov.sg](http://www.cccs.gov.sg).