

September 12, 2011

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Re: CSA Consultation Paper 91-402 – Derivatives: Trade Repositories

Ladies and Gentlemen:

MarkitSERV¹ is pleased to submit the following comments to the Canadian Securities Administrators Derivatives Committee (the "**Committee**") on its consultation paper regarding trade repositories (the "**Consultation Paper**").²

Introduction

MarkitSERV views its role in the global derivatives markets as an independent facilitator, making it easier for derivatives market participants to interact with each other. To achieve this goal, MarkitSERV provides trade processing, confirmation, matching and reconciliation services for OTC derivatives across regions and asset classes. MarkitSERV also provides universal middleware connectivity for downstream clearing and reporting. Such services, which are offered by various providers, are widely used by participants in the global derivatives markets today and are recognized as tools that increase efficiency, reduce cost, and secure legal certainty. With over 2,100 firms currently using the MarkitSERV platform, including over 22,000 buy-side fund entities, including major Canadian banks, hedge funds and pension plans, its legal, operational, and technological infrastructure plays an important role in supporting the global OTC derivatives markets.

As a service and infrastructure provider to the Canadian and the international OTC derivatives markets, MarkitSERV supports the objectives of the G-20 commitments³ and the Committee's objectives of increasing transparency and efficiency in the OTC derivatives markets.

¹ MarkitSERV, jointly owned by The Depository Trust & Clearing Corporation (DTCC) and Markit, provides a single gateway for OTC derivatives trade processing. By integrating electronic allocation, trade confirmation and portfolio reconciliation, MarkitSERV provides an end-to-end solution for post-trade transaction management of OTC derivatives in multiple asset classes. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, central clearing counterparties and trade repositories. In 2010, more than 19 million OTC derivatives transaction sides were processed using MarkitSERV. Please see www.markitserv.com for additional information.

² Canadian Securities Administrators, "CSA Consultation Paper 91-402 – Derivatives: Trade Repositories" (June 23, 2011).

Executive Summary

As further explained below, we believe that: (1) if the Committee decided to establish a domestic reporting regime it should aim to minimize the potential for data duplication and fragmentation by: (a) adopting clear rules regarding reporting obligations for cross-border transactions; (b) working with international regulators to be in a position to identify duplicative data; (c) permitting and encouraging the use of Independent Verification Services (“*IVS*”) for reporting services; (d) requiring trade repositories to accept all categories of OTC derivatives in a given asset class; and (e) working with international regulators to agree upon standardized data sets; (2) the reporting counterparty should be permitted to decide which trade repository to report to if more than one is available; (3) in addition to requiring the reporting of confirmation data, the Committee should also explicitly require the legal confirmation of the OTC derivatives transaction, including all the terms of the transaction, to facilitate counterparties’ compliance with the reporting requirements; (4) the Committee will need to specify timing and contents requirements for several distinct reporting data flows, and (5) the reporting standards should reflect the role that existing infrastructure can play in reducing the cost of implementation.

Comments

1. Any Domestic Reporting Regime Should Be Designed To Avoid Unnecessary Duplication and Fragmentation of OTC Derivatives Data

In the Consultation Paper, the Committee discusses at length whether it should require Canadian counterparties to report OTC derivatives data to a Canadian-based trade repository or whether to endorse a global approach for trade reporting.⁴ As described below, we believe that the Committee should either endorse a global approach or, if it decides there is sufficient reason to establish a local regime, create clear and specific rules to eliminate or at least limit the potential for data fragmentation and costly duplication.

The OTC derivatives markets are international by their very nature. Therefore, real transparency can only be created if the relevant transaction data is collected and made available in a globally-consolidated fashion. We believe that the most sound and cost-efficient method of creating regulatory transparency would be to create global trade repositories for each asset class. Such approach would avoid duplicative reporting (because each trade would only be reported once) while also preventing data fragmentation (because all data would be stored in one place). However, we are aware of the challenges that may be involved in creating global trade repositories⁵ and understand many of the Committee’s reasons for desiring a Canadian-based trade repository.⁶ We believe that, if national regulators create their own trade repositories and data reporting systems, global OTC derivatives data will, at best, include duplicative data because cross-border transactions will be reported in more than one jurisdiction. At worst, the data that is collected in the various trade repositories will not be useful for regulatory purposes (e.g., if multi-jurisdictional data cannot be accessed on an aggregated level).

We therefore urge the Committee, if it decides to mandate the use of a Canadian trade repository, to implement the following measures in order to minimize the potential for duplicative reporting and data fragmentation, while enabling a timely and cost efficient implementation.

³ “Leaders’ Statement: The Pittsburgh Summit” (Sept. 24-25, 2009) and “The G-20 Toronto Summit Declaration” (June 26-27, 2010) available at http://www.g20.org/pub_communiques.aspx.

⁴ See Consultation Paper, 18-20.

⁵ For example, extraterritoriality issues would make it difficult if not impossible for any nation to have jurisdiction or control over such a repository. Additionally, it would likely prove to be difficult for all nations to agree on the selection of a global trade repository.

⁶ See Consultation Paper, 19.

a. The Committee Should Clearly Define Reporting Responsibilities to Ensure that OTC Derivatives Data is Indeed Reported Domestically

The Consultation Paper sets forth rules which identify the counterparty to the OTC derivative transaction that would be responsible for reporting based on the type of entities that are involved in the transaction and their nationality.⁷ Specifically, for cross-border transactions, the Committee would permit the foreign counterparty to report the data to a Canadian trade repository or, if the foreign counterparty refuses to do so, for the domestic counterparty to report it directly. It also considers the option where the domestic party requests the non-Canadian trade repository to provide an electronic copy of the report to the Canadian trade repository.⁸

While we support the flexibility that these rules provide, we are concerned that, under this rule, the Committee would have limited authority to ensure that data regarding cross-border transactions is indeed reported domestically. For example, the rule only requires a domestic counterparty to *request* data from the non-Canadian trade repository. We believe that the Committee must clearly assign responsibility for reporting of these cross-border transactions in order to ensure that data is indeed reported to a domestic trade repository. Even if data for such cross-border transaction is available elsewhere because the foreign counterparty reports to a foreign trade repository, the Committee will be unable to access complete and accurate aggregated data of the domestic market if such information is not reported domestically.

We also note that, while other rules in respect to reporting obligations permit the reporting party to delegate its responsibilities to a third party, the rule regarding cross-border transactions does not. We believe that the ability to delegate reporting obligations to third parties will be especially important in the context of cross-border transactions because the domestic counterparty tasked with reporting might be a non-financial entity and therefore might not have the capability and/or resources to report.

We therefore believe that the Committee could increase the effectiveness of this rule by explicitly placing the obligation to report a transaction with a foreign counterparty on the domestic counterparty, while permitting this party to delegate its obligation to a third party or to the foreign counterparty. On that basis, the Committee would have authority to ensure that cross-border data is reported, but a foreign counterparty or third party could still assume the domestic counterparty's reporting obligation if this was the most convenient and efficient way of reporting.

b. The Committee Should Work Toward An Internationally Harmonized Approach to Address Duplicative Data Reporting in Order to Enable Global Aggregation

If the Committee requires domestic reporting of OTC derivative transactions that are also reported in a foreign jurisdiction, we believe that it must ensure that such data can be properly aggregated on a global scale. If a global trade repository is not created, the aggregation of data from trade repositories in multiple jurisdictions will be needed. However, globally-aggregated data will not be useful if it suffers from double counting (due to reporting of the same data in more than one jurisdiction).

We therefore urge the Committee to work with international regulators to ensure that data reported in more than one jurisdiction is easily identifiable so that it will be counted only once when aggregated. Specifically, we believe that the use of a standardized, unique transaction identifier would help addressing this problem. The CFTC and SEC, for example, have proposed to require each swap and SB swap transaction to be assigned a unique identifier⁹ and the recent Committee on Payment and Settlement Systems and the Technical

⁷ See *id.* at 17.

⁸ See *id.*

⁹ See CFTC Regulation - Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76574, 766602-03 (published Dec. 8, 2010) (describing Unique Swap Identifiers); SEC Regulation - Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75208, 75285 (published Dec. 2, 2010) (describing transaction identifiers).

Committee of the International Organization of Securities Commissions' consultative *Report on OTC derivatives data reporting and aggregation requirements* states that "[a] unique trade identifier would assist authorities in avoiding the double-counting of a trade reported to two different TRs."¹⁰ The Committee has also proposed to require Unique Derivative Identifiers,¹¹ but we request that the Committee clarify that it would require these Unique Derivative Identifiers to be the same identifiers that are used for reporting in foreign jurisdictions. Otherwise, these transaction identifiers will not be useful in terms of ensuring the collection of meaningful and accurate data in light of cross-border, duplicative reporting.

c. The Committee Should Permit and Encourage the Use of Independent Verification Service Providers for Reporting Purposes As This Will Secure Data Accuracy and Reduce The Cost of Implementation

As an initial matter, we believe that the Committee should establish a requirement for Canadian OTC derivatives transactions to be legally confirmed according to the procedures discussed below in Section 3, a process which is often facilitated by IVS' today.¹²

We further suggest that the Committee encourage counterparties to delegate the task of data reporting to entities that perform such confirmations and consequently capture the confirmation data. This would provide several benefits to the Committee and market participants. First, IVS' can facilitate the reporting of a single set of confirmed and accurate data to the trade repository because the IVS would also facilitate the agreement of both counterparties on the full set of transaction details. Second, a single third party would handle a counterparty's confirmation and reporting obligations, thus reducing costs compared to contracting with two third parties. Third, using IVS' for confirmation and reporting could leverage existing and planned infrastructure because many internationally-operating IVS' such as MarkitSERV can facilitate data reporting based on established connectivity with multiple parties.

For these reasons and in general, we believe it is important for counterparties to be able to delegate their various regulatory functions to such internationally active third party service providers. These entities are very often subject to multiple jurisdictional requirements, so it will often be easier for a third party service provider to ensure the compliance of participants across various national requirements than for counterparties to handle these responsibilities themselves.

d. The Potential For Domestic Data Fragmentation Should Be Limited By Requiring Trade Repositories to Accept All Categories of OTC Derivatives in a Given Asset Class

We welcome the Committee's determination to require Canadian trade repositories to accept all categories of OTC derivatives transactions in the asset class that they are operating in.¹³ We believe that such requirement will help limiting the degree of data fragmentation between trade repositories that might occur in regulatory reporting, and note that it is consistent with requirements for Swap Data Repositories in the United States.¹⁴ Of note, we believe that, in order to be effective, this requirement has to extend to both cleared and uncleared

¹⁰ See Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions' consultative report entitled *Report on OTC derivatives data reporting and aggregation requirements* (August 2011) at 34.

¹¹ See Consultation Paper, 23.

¹² We define IVS as entities that act independently from, but on behalf of, all counterparties to an OTC derivative transaction to facilitate the agreement between those counterparties upon a verified record of OTC derivative transactions transaction details where such record is relied upon by the counterparties to the OTC derivative transaction and other market participants for communication of transaction details to a clearing agency or trade repository.

¹³ See Consultation Paper, 3.

¹⁴ See Swap Data Repositories: Registration Standards, Duties and Core Principles (Final Rule), 76 Fed. Reg. 54538, 54579 (published Sept. 1, 2011) (to be codified at 17 C.F.R. § 49.10(b)) ("If a swap data repository accepts swap data of a particular asset class, then it shall accept data from all swaps of that asset class, unless otherwise prescribed by the Commission.").

derivatives in each asset class. In this context, we also urge the Committee to create greater clarity about the definition of the various asset class categories so that parties and trade repositories can provide the appropriate transaction- and position-level and aggregated data the Committee is requesting.

e. The Committee Should Work With International Regulators to Standardize Data Sets

In order to ensure that the data captured in a domestic trade repository is also useful on a global level, standards must be agreed upon internationally regarding the specific information that is reported to trade repositories. In this regard, we welcome the work that regulatory authorities such as the FSB or CPSS/IOSCO have initiated regarding data standards and internationally used identifiers. We also encourage the Committee to actively contribute to such discussions and make any agreed standards an integral part of the Canadian reporting requirements.

2. The Reporting Party Should Be Permitted to Choose Which Trade Repository To Report To if there are Multiple Trade Repositories

The Committee set forth a series of rules to identify which counterparty will be the reporting party.¹⁵ We support most aspects of these rules because they would, in large part, assign the reporting obligation to the counterparty that is best equipped to report, and because most of these rules would permit the reporting party to delegate the reporting to a third party. This express ability to delegate reporting obligations is in accord with rules proposed by the SEC.¹⁶

However, the Consultation Paper does not describe which counterparty will have the ability to choose a trade repository if there are multiple trade repositories for a given asset class. We recommend that the Committee address this issue in its standards. We believe that the reporting party should, within the scope of its national requirements, have the ability to choose which trade repository it reports the transaction to. We also believe, though, that the reporting counterparty should be allowed to delegate the actual reporting to third parties where it sees fit.¹⁷ By providing such flexibility, the Committee would enable the reporting party to satisfy its reporting obligations in the most efficient and least costly manner.¹⁸ Further, this approach is likely to result in a lower degree of data fragmentation because major reporting parties will likely limit the number of trade repositories they will use for operational reasons.

These standards should apply to all derivative transactions, regardless of how they are executed and whether or not they are centrally cleared.¹⁹ This will ensure that the reporting counterparty can satisfy its obligations in the most efficient and least costly manner, which might be through delegation to third parties, while at the same time limiting the degree of data fragmentation for all OTC derivatives.

¹⁵ See Consultation Paper, 17.

¹⁶ See SEC Regulation – Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75208, 75211 (published Dec. 2, 2010).

¹⁷ Internationally active IVS are well suited to assist counterparties in complying with their respective reporting obligations and can assist with applying relevant national standards for documentation.

¹⁸ We believe that the party that bears the cost of reporting should also have the choice of which trade repository to report to. The cost that is borne by the reporting party in this context will consist not only of direct cost (the fee charged by the trade repository for receiving and storing the trade) but also of indirect cost (e.g. connectivity) which can be significant. It would therefore reduce the cost of implementation if reporting parties were able to rely on existing connectivity for reporting instead of being obliged to establish new connectivity with all existing trade repositories.

¹⁹ For the avoidance of doubt, we believe that the reporting party should be provided with these choices regardless of whether the derivative transaction is executed on an electronic platform and/or whether it is centrally cleared, as this will ensure that the accountability for the reported information is with the party that also originated the transaction.

3. The Legal Confirmation of the OTC Transaction, Including All the Terms of the Transaction, Should Be Explicitly Required In Order To Facilitate Timely Reporting to Trade Repositories

We support the Committee's proposal to require reporting of a "full signed legal agreement of the counterparties including all the terms of the transaction (*i.e.*, the legal confirmation)."²⁰ We believe that the reporting of a comprehensive set of confirmation data will provide regulators with a sufficient level of detail to perform various types of analysis. We also support the Committee's proposal for the confirmation data to be "matched by the trade repository or a related third-party matching service through affirmation by the counterparties."²¹ This will ensure that the reported data is accurate and complete, and it also mirrors rules proposed by the CFTC.²² However, while the Committee requires counterparties to *report* the confirmation, it does not expressly require them to *execute* a confirmation. We believe that this lack of a requirement to confirm OTC derivatives transactions in a timely fashion might make it more difficult for counterparties to comply with their reporting obligations. It is also inconsistent with the approach that was taken by major international regulators.²³

We therefore recommend that the Committee explicitly require Canadian counterparties to confirm their transactions in OTC derivatives in a timely fashion.²⁴ Further, we believe that the Committee should harmonize any requirements related to the timeliness and the format of confirmation with those that are being established outside Canada.²⁵

Further, the Committee should note that the confirmation of OTC derivatives can be performed in various manners, which includes techniques such as "affirmation" or "matching." For the avoidance of doubt, then, we urge the Committee to clarify that confirmation data can be produced through "matching, affirmation, or other methods that result in producing a legally binding agreement of the complete set of transaction details between the counterparties."

Finally, we urge the Committee to consider regulating providers of verification services that facilitate confirmations in order to ensure that entities such as IVS', who play an important role in the international OTC derivatives markets, function properly and are subject to appropriate regulatory supervision. Similarly, the SEC has proposed requiring the registration of such entities as Clearing Agencies.²⁶

²⁰ Consultation Paper, 24.

²¹ *Id.*

²² See Swap Data Recordkeeping and Reporting, 75 Fed. Reg. at 76599 (defining "Required swap creation data" as including "confirmation data," and "confirmation" as "the consummation (electronically or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation must be in writing (whether electronic or otherwise) and must legally supersede any previous agreement (electronically or otherwise).").

²³ See CFTC Regulation – Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 Fed. Reg. 81519, 81531 (to be codified at 17 C.F.R. § 23.501) (published Dec. 28, 2010); SEC Regulation - Trade Acknowledgment and Verification of Security-Based Swap Transactions, 76 Fed. Reg. 3859, 3874 (to be codified at 17 C.F.R. § 240.15Fi-1(b)) (published Jan. 21, 2011); Proposal for a European Commission, Regulation of the European Parliament and of the Council on OTC Derivatives, Central Counterparties and Trade Repositories ("EMiR"), Article 8.

²⁴ This would primarily serve to formalize today's best practice of electronically confirming trades. For example, a large number of OTC credit and interest rate derivative transactions involving Canadian counterparties are electronically confirmed today. We therefore believe that any additional burden for market participants would be limited.

²⁵ We also urge the Commissions to refer to MarkitSERV's comment letters to the proposed SEC and CFTC rules, available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=30671&SearchText=markitserv>; <http://www.sec.gov/comments/s7-03-11/s70311-2.pdf>.

²⁶ See Clearing Agency Standards for Operation and Governance, 76 Fed. Reg. 14472, 14495 (published March 16, 2011).

4. The Committee Should Create Separate Standards For The Data Flows To Support Public Reporting And Regulatory Reporting Respectively

We believe that the Committee should clarify the substance and rules regarding the actual data flows that it expects counterparties to provide. Further, the meaning of “real time” also needs to be clarified in this context.²⁷

When regulators design transparency regimes that include both public post-trade and regulatory reporting, they typically consider establishing standards for three different data flows:

- Real-time data set from the reporting party to a real-time disseminator,
- Real-time data set from a real-time disseminator to the public, and
- Regulatory data set from the reporting party to a trade repository.

We therefore believe that the Committee will need to prescribe both the contents and the timeliness for these three data flows separately, similar to proposed rules by the SEC and the CFTC in the US.²⁸ However, the Committee should ensure that it designs these distinct reporting requirements in such way that they do not impose any unnecessary duplicative efforts from the reporting parties.

5. Existing Infrastructure Can Be Employed To Support Potential “Real-Time” Reporting Requirements

The Committee requested comment²⁹ on what would be required to enable participants in the Canadian OTC derivatives market to report their transactions in “real-time” and how long it would take to achieve this functionality.³⁰

We believe that it will ultimately be up to the reporting parties (*i.e.*, primarily the major participants in the Canadian OTC derivatives market) to decide on the infrastructure that is best suited to facilitate the required data flows to real-time disseminators and/or to trade repositories. While this might require significant additional investments, the Committee should note that existing middleware infrastructure can be leveraged to reduce the burden of implementation. MarkitSERV, as one of the existing internationally active middleware providers, is in the process of building functionality to support both real-time data flows to disseminators and regulatory reporting to trade repositories. While this functionality is focused on allowing counterparties to comply with upcoming reporting requirements in the United States and in Europe, we are also planning to offer appropriate functionality to facilitate compliance with reporting regimes in other countries if required.

We therefore urge the Committee to create sufficient flexibility in its standards for reporting parties to delegate their reporting obligations to third party providers where they see fit. Such flexibility will enable them to choose the means of complying that reduce the cost and increase the efficiency and timeliness of implementation.

²⁷ The Consultation Paper seems to use “Real-time reporting” both in the context of public dissemination of OTC derivative transaction information and the reporting of regulatory information to trade repositories.

²⁸ See SEC Regulation - Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75208, 75284-85 (to be codified at 17 C.F.R. §§ 901(c), 902, 901(d)(1)) (detailing real-time reporting, real-time dissemination, and regulatory reporting, respectively); CFTC Regulation – Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 76172 (to be codified at 17 C.F.R. §§ 43.3(a), 43.3(b)) (detailing real-time reporting and real-time dissemination, respectively); CFTC Regulation – Swap Data Recordkeeping and Reporting Requirements, 75 Fed. Reg. 76574, 766600 (to be codified at 17 C.F.R. § 45.3) (detailing regulatory reporting requirements).

²⁹ Question #2: What is required to enable Canadian derivative market participants to be able to report derivatives transaction information in real time and how long will it take to achieve this functionality? (page 29)

³⁰ As explained above, we feel that the meaning of “real time” in the Consultation Paper is somewhat unclear. However, we believe that the Committee in its question probably refers to both data flows from the reporting party.

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MarkitSERV appreciates the opportunity to comment on the Consultation Paper, and would be happy to elaborate or further discuss any of the points addressed above.

In the event you may have any questions, please do not hesitate to contact the undersigned or Gina Ghent at gina.ghent@markitserv.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Gooch".

Jeff Gooch
Chief Executive Officer
MarkitSERV