

September 12, 2011

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
M5H3S8

Me Anne-Marie Beaudoin
Secrétaire de l'Autorité
Autorité des marchés financiers
800, square Victorie, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Quebec
H4Z1G3

Doug Brown
General Counsel and Director
Manitoba Securities Commission

Barbara Shorounis
Director, Securities Division
Saskatchewan Financial Services
Commission

Michael Brady
Senior Legal Counsel
British Columbia Securities
Commission

Debra MacIntyre
Senior Legal Counsel, Market
Regulation
Alberta Securities Commission

Wendy Morgan
Legal Counsel
New Brunswick Securities
Commission

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

Ladies and Gentlemen:

Markit¹ 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

Markit is a service provider to the global derivatives markets, offering independent data, valuations, risk analytics, and related services for OTC derivatives across many regions and asset classes in order to reduce risk, increase transparency, and improve operational efficiency in these markets. Markit supports the objectives of the G-20 commitments³ and the Committee’s objectives of increasing transparency and efficiency in the OTC derivatives markets.

Executive Summary

As further explained below, we believe that: (1) any “real-time” reporting regime,⁴ including delays for block trades, should be calibrated based on the liquidity of a given product, and the liquidity determination should be: (a) based on several factors including trade frequency, average transaction size, bid/offer spreads, the agreement on the price, and the number of market makers; (b) independently measured for the different maturity “buckets” of each OTC derivative product; and (c) revisited at an appropriate frequency; and (2) the Committee

¹ Markit is a financial information services company with over 2,200 employees in North America, Europe and Asia Pacific. The company provides independent data and valuations for financial products across all asset classes in order to reduce risk and improve operational efficiency. Please see www.markit.com for additional information.

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

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_communique.aspx.

⁴ In these comments, Markit does not express any view as to whether any post-trade reporting of derivative transactions should indeed occur in “real time,” or only with a significant delay.

should limit the potential for harmful data fragmentation by requiring public dissemination of OTC derivatives transactions to be performed by trade repositories only.

Comments

1. Any Real-Time Reporting Regime Should Be Calibrated Based on The Liquidity Of The Underlying Instruments

We commend the Committee for recognizing that the real-time public reporting of block trades “could make hedging the risks of a large transaction more difficult and expensive”⁵ and for therefore proposing to require a delay before public dissemination of OTC derivatives transaction data.⁶ We also commend the Committee for ensuring that it properly defines “block trades” by instituting a study on the subject.⁷

We would also urge the Committee to study the effects of public reporting on different types of OTC derivatives. In particular, we believe that public dissemination of transaction information should be delayed longer for less liquid products because dissemination delays should permit counterparties to hedge their exposure before the market can anticipate the hedge and move against them.⁸ Because less liquid OTC derivatives will require more time to hedge against than more liquid ones, and because public dissemination will easily allow the market to anticipate a counterparty’s hedging needs, the public dissemination delay should be greater for the less liquid products.

However, measuring liquidity for OTC derivatives can be challenging because many of these products trade only infrequently. This is further complicated by the fact that even products in the same category can have significantly different liquidities, for example due to differences in their maturities. If public dissemination delays are based on liquidity, however, the task of liquidity measurement will be very important. This is because too great a degree of post-trade transparency for less liquid OTC derivatives could effectively eliminate liquidity in these products since market participants may be unwilling to trade in such products if they cannot hedge their exposure.

We therefore provide the Committee with the following advice regarding how we believe liquidity should be measured for OTC derivatives so that it is an effective and accurate gauge for post-trade transparency purposes.

a. Liquidity Measurement Of OTC Derivatives Should Be Based on A Variety Of Relevant Factors

We do not believe that liquidity for most products that trade mainly over-the-counter can be accurately measured based solely on observed trading volumes. This is mainly because many of these products trade so infrequently that trading volumes during one period of time may not be a good indicator of volumes for a different period of time. As a provider of Liquidity Scores for a variety of financial products,⁹ we have considerable experience making “prospective liquidity” determinations. We believe that prospective liquidity, or the likelihood of being able to sell a position in the product equal or close to the current market price, is the best way to measure the liquidity of financial instruments that trade mainly over-the-counter. The International Organization of Security

⁵ Consultation Paper, 29.

⁶ See *id.* at 31.

⁷ See *id.* at 30.

⁸ See CFTC Proposed Rule; Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 76166 (published Dec. 7, 2010) (“As other market participants anticipate the block trade or large notional swap parties’ hedges, prices may rise adverse to the market participant who is attempting to hedge and, as a result, certain market participants may be forced to take on increased costs and market exposure in offsetting their risk.”).

⁹ Markit provides liquidity measures, based on a number of relevant inputs, for a variety of OTC derivative products, bonds, loans, and structured finance instruments.

Commissions (IOSCO) recently endorsed prospective liquidity as a means of determining market liquidity.¹⁰ Prospective liquidity can be determined by analyzing, amongst others, a combination of the following factors:

- Trade frequency;
- Average transaction size;
- Bid/offer spreads;
- Agreement on the price; and
- The number of market makers.

We believe that the Committee, or the applicable provincial regulators, should make determinations as to the liquidity of the various OTC derivative products based on these factors, group products into “liquidity buckets” on that basis, and establish appropriate delays for the public dissemination of transactions (and/or block trades) for the different liquidity buckets.

b. Liquidity Should Be Independently Measured for Different Maturities or Maturity Ranges Of Each Product

The liquidity of the “benchmark” maturity of an OTC derivative can be significantly different than the liquidity of other maturities of the same product. For example, foreign exchange swaps and forwards are highly liquid for maturities of less than one year but become much less liquid for maturities beyond that point.¹¹ Because the same OTC derivative product with different maturities can have such drastically different liquidity measurements, requiring the same time delay¹² for the reporting of transactions in all maturities of a specific OTC derivative may effectively eliminate the ability of liquidity providers to structure deals with less common maturities due to the increased hedging costs. This would be especially detrimental in situations where counterparties need to tailor the maturity of the product to their individual needs, for example to hedge an underlying currency exposure that is generated by their commercial activity.

As a result, we believe that the Committee, or the applicable provincial regulators, should make a determination regarding the liquidity for specified maturities for individual OTC derivative products in order to ensure that liquidity is properly measured. For this approach to be practicable we recommend that such determination would result in the creation of maturity buckets or cut-off points for each category of OTC derivative product.¹³

c. Liquidity Measurements Should Be Re-examined Periodically and When Necessary

As experience has shown, liquidity of financial instruments can experience significant changes over time and can dry up completely in some circumstances. As described above, we are concerned that if very timely dissemination of transactions continued to be required for an OTC derivative product that had become less liquid, it could eliminate liquidity for that product altogether. We therefore recommend that the Committee or the applicable provincial regulators require liquidity determinations of OTC derivatives to be conducted with sufficient frequency in order to ensure that public dissemination requirements closely track market developments and events. Specifically, we believe that these decisions should be revisited and reconsidered several times per year, and that the Committee or the applicable provincial regulators should also have the option to revisit such classifications on an *ad hoc* basis in periods of volatility.

¹⁰ See IOSCO Task Force on OTC Derivatives Regulation, Report on Trading of OTC Derivatives, 26-29, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD345.pdf>.

¹¹ See U.S. Treasury Proposed Determination; Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 76 Fed. Reg. 25774, 25777 (published May 5, 2011) (“Sixty-eight percent of foreign exchange swap and forward contracts mature in less than a week, and 98 percent mature in less than a year.”).

¹² This might also be no time delay at all, or “real time”.

¹³ Maturity buckets could be, for example, “up to 5 years, 5 to 10 years, etc., while a maturity cut-off point could be “longer than 10 years.”

2. The Committee Should Limit the Potential For Data Fragmentation By Requiring Real-Time Dissemination To Be Performed Only By Trade Repositories

Transparency in financial markets is most useful if it is provided in a consolidated fashion. We are therefore concerned that the creation of various national post-trade reporting regimes for OTC derivatives could result in duplicative reporting of transactions and might create information that is not sufficiently harmonized to be aggregated. Further data fragmentation can occur on the domestic level if information about transactions in OTC derivatives is publicly disseminated by various parties. Any data fragmentation or duplicative reporting will reduce the benefit of transparency in the OTC derivatives market, so the Committee must avoid fragmentation and duplication however possible.

We believe that a globally harmonized post-trade transparency regime for OTC derivatives would best avoid data fragmentation and duplicative reporting. However, we understand the difficulties that would be involved in creating a functional and efficient global regime, and we agree with many of the Committee's reasons for desiring Canadian-based transparency arrangements.¹⁴


We therefore believe that, if the Committee established a post-trade reporting regime for Canadian OTC derivatives transactions, it should aim to minimize the amount of unnecessary domestic data fragmentation by limiting the number of acceptable real-time disseminators. Specifically, we believe that the Committee should follow the U.S. Securities and Exchange Commission's approach, and only permit real-time dissemination through registered trade repositories.¹⁵ This would result in less fragmentation of real-time data because there would be fewer sources of such data, and therefore fewer avenues for dissemination. This, in turn, would result in a more meaningful increase in public transparency. While we encourage the Committee to reduce the number of trade repositories in other ways if possible, we note that the Committee's proposal to require trade repositories to accept all OTC derivatives in the asset class they are active in will effectively limit the number of trade repositories to some degree.

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We appreciate the opportunity to provide these comments on this proposed regulation.

We thank the Committee for considering our comments. In the event you may have any questions, please do not hesitate to contact the undersigned or Marcus Schüler at marcus.schueler@markit.com.

Sincerely,



Kevin Gould
President
Markit North America, Inc.

¹⁴ See Consultation Paper, 19.

¹⁵ See Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75208, 75285 (published Dec. 2, 2010) (to be codified at 17 C.F.R. § 242.902(a)) ("Except in the case of a block trade, a registered security-based swap data repository shall publicly disseminate a transaction report. . . ."). The proposed rule contrasts in this aspect with the rule proposed by the CFTC. See Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 76172 (published Dec. 7, 2010) (to be codified at 17 C.F.R. §43.2(s)).