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Alberta Securities Commission
Authoritè des marchès financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission

September 12, 2011

Re: CSA Consultation Paper 91-402

To: Canadian Securities Administrators Derivatives Committee

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Canadian Securities Administrators Derivatives Committee (the "Committee") on its consultation paper governing derivatives trade repositories (the "Consultation Paper"). DTCC's comments are provided with the goal of assisting the Committee in determining how best to provide increased transparency and oversight to the over-the-counter ("OTC") derivatives market.

Overview of DTCC's Repository Service
DTCC currently operates two subsidiaries specifically responsible for providing repository services to the global derivatives community:

- **Trade Information Warehouse ("TIW"):** A wholly-owned U.S. subsidiary regulated by the Federal Reserve Bank of New York and the New York State Banking Department. TIW provides both post-trade lifecycle processing and trade repository services for an estimated 98% of the global OTC credit derivative ("CDS") market. This repository has been fully functional and providing comprehensive services to the global community of dealers and regulators since 2006.

- **DTCC Derivatives Repository Limited ("DDRL"):** A wholly-owned U.K. subsidiary regulated by the Financial Services Authority. DDRL is responsible for providing repository services for the global OTC equity derivative market. DDRL has offered these services as the preferred supplier to the International Swaps and Derivatives Association ("ISDA") global dealer community since late 2010.

The global regulatory community has recognized the value of trade repositories in bringing transparency to previously opaque markets, as evidenced by G20 commitments made at the September 2009 Pittsburg Summit, the October 2010 Financial Stability Board report on OTC Derivatives Market Reform, guidance provided by the OTC Derivatives Regulators' Forum ("ODRF") and legislation in the U.S. (*i.e.*, the Dodd-Frank Act) and E.U. (*i.e.*, the European Market Infrastructure Regulation). Further, the international dealer community has recognized the opportunity to offer solutions on this issue, resulting in several recent developments in the global trade repository industry:

- ISDA, through a competitive process to develop a common repository platform, selected DTCC as the preferred supplier of a global Interest Rate repository in May 2011 and global Commodity (oil) repository in June 2011. The Commodities repository will be built as a joint venture between DTCC and European Federation of Energy Traders ("EFET").

- The Association of Financial Markets in Europe, Securities Industry and Financial Markets Association and Asia Securities Industry & Financial Markets Association, also through a competitive process, selected DTCC in partnership with the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") to build a global FX repository in July 2011.

DTCC is now working closely with the relevant partners and asset class experts to design the repositories that will meet the regulatory reporting requirements identified in the respective regional or national jurisdictions and develop plans and timelines for early implementation in 2012. We expect all of our trade repositories to be able receive transaction data for testing purposes by Q1 2012, in advance of the anticipated implementation of the U.S. Dodd-Frank reporting requirements.

DTCC is currently working to define the message specifications for each asset class, leveraging the FpML data standard widely recognized for electronically representing OTC derivative contracts. In coordination with the industry, the Interest Rate derivatives repository will be operational by November 2011 to satisfy regulatory reporting under ODRF guidelines, with further enhancements to follow by Q4 2011 to meet reporting requirements under U.S. Dodd-Frank rules. While rules are not yet finalized in the U.S. as to reporting effective dates, reporting is anticipated to commence in late Q1 2012.

Parallel to the development of individual repositories, DTCC is enhancing its portal service, which will effectively provide reporting entities and regulatory communities with a single point of access to view all underlying asset class repositories operated by DTCC: CDS, Equities, Interest Rates, Commodities and FX derivative trades, globally. This allows reporting entities and regulators to leverage existing communication linkages and processes, easing the burden, cost and complexity of connecting to multiple repositories.

The Importance of Global Transparency

Derivatives are inherently a global business involving counterparties and underlying reference entities across multiple jurisdictions and across various currencies – as such, derivatives regulation demands a global solution. International bodies, such as the ODRF, the Committee on Payment and Settlement Systems ("CPSS") and the Technical Committee of the International Organization of Securities Commissions ("IOSCO"), play an important part in driving international information sharing guidelines or agreements amongst regulators to allow global trade repositories to operate as a central distributor of data to the regulators, as is the case with TIW under the ODRF data access guidelines.

Without a single view across all jurisdictions, the time and complexity associated with the accurate aggregation of data could prove costly in times of market stress. As an example, in 2008 around the collapse of Lehman Brothers, market rumors suggested CDS exposures in excess of USD $400 billion. However, following analysis of the CDS data held in TIW, it was possible for DTCC to calm markets by confirming actual net exposures of around USD $6 billion. In November 2008, DTCC began publishing aggregate market data and net exposures of underlying entities traded[1] to help inform the public and market participants of the actual CDS activity. Subsequently, these reports have been expanded to include reports for market activity volumes and maintain historical report views for trend analysis. DTCC ensures its public reporting is performed at an aggregate and anonymous level to preserve counterparty confidentiality.

Additional steps were taken in 2009 to expand DTCC's CDS trade inventory to include records not captured on an electronic matching system. These single-sided submitted records (referred to as "copper") are held in DTCC's inventory as a snapshot record to complete the data inventory to ensure maximum coverage of the CDS asset class.

The aggregate CDS data from TIW has proven useful to various global regulators in dispelling rumors of market manipulation of sovereign debt. In March 2010, in response to growing concerns over European sovereign debt, DTCC responded to regulators' requests for information, provided regulators attested that such information was of material interest and be kept confidential. To date, DTCC has responded to over 100 such *ad hoc* requests from regulatory authorities, using the ODRF data access guidelines as a baseline for complying with such requests.[2]

In January 2011, DTCC created a regulators portal through which appropriate regulators and other authorized authorities directly access and query through secure interfaces more tailored and detailed position reports from a global data set relating to their regulatory oversight requirements. The portal offers market transparency by providing authorities

[1] http://www.dtcc.com/products/consent.php?id=tiwd/products/derivserv/data/index.php.
[2] The ODRF represents a group of over 50 regulators worldwide who have agreed to guidelines for how information sharing can be achieved amongst regulators to ensure fair, equal and open access to trades of material interest to their regulatory mission.

the type of granular data necessary to protect against systemic risk. However, the portal also sets pre-determined filters to limit access to only that data in which a regulator has an appropriate interest. Regulators signed up to DTCC's regulator portal have access to trade data information and aggregated position reports, with the ability to download such reports. The detail-level of viewable information varies; for example, a market regulator and prudential supervisor will have the ability to view trade level details for the firms under their jurisdiction, while central banks will have aggregate report views by currency and concentration. Additionally, the data inventory includes not only those trades over the entities supervised but also the data for underlying reference entities of material interest – even if traded by foreign counterparties.

To date, over 30 different regulators worldwide have linked to DTCC's portal, including regulators of various types in the Americas, Europe and Asia Pacific region. Based on this experiential foundation, DTCC's global trade repository ("DTCC GTR") will provide regulators a global portal to assess data of material interest to their regulatory mission and, as provided for under law, to assess systemic risk and financial stability in the market, oversee market participants and conduct market surveillance. As regulations are developed in each of the G20 countries, the portal will also facilitate reporting to meet the requirements of those regulatory regimes. DTCC plans to extend this framework to support the reporting of all the additional asset classes.

Additionally, global trade repositories inform the public about market activity and inventory for the markets served. Given that OTC markets are cross-border and global in nature, a centralized aggregation of inventories per asset class is critical to understanding the size of the market – for regulatory authorities, market participants, end-users or investors, media and the general public. Such public disclosure can be performed at an aggregate and anonymous level, preserving counterparty confidentiality. As noted above, such public aggregate reporting assists regulators in understanding the exposure of the markets they regulate relative to the size of the global markets, allowing for more effective assessment of systemic risk to the financial system.

Recently, aggregated data demonstrated its value in the context of the European financial crisis, where it was important to understand the net exposures for the underlying European sovereigns and the market activity volumes. Such information helped to inform the markets as to the amount of inventory and exposure relative to other sovereigns and helped regulators to understand the relative risk exposures for the entities they supervise as compared to the overall market exposure. Making such information readily available is critical to understanding systemic risk and financial stability and an important function that a global trade repository must serve.

Data Aggregation

CPSS-IOSCO's August 2011 report recognizes the importance of public transparency for a decentralized market, acknowledging that trade repositories are best placed to provide information on the markets served, thereby facilitating the exercise of market discipline and investor protection.[3] The CPSS-IOSCO report further recognizes that this type of data helps to inform the public of the relative size of the market, market activity volumes, either by currency or underlying concentrations, and aggregate position inventory.

It will prove difficult for regulators to aggregate such data across multiple repositories, as this requires bilateral information sharing agreements, incurs costs for regulators to develop technology tools to both aggregate the data and relies on receipt of data in a consistent format across all repositories, with the ability to identify duplication and potential omission. The difficulty in overcoming such challenges will compromise the timeliness and quality of the data aggregate, which is critical, particularly in times of crisis or concern.

DTCC urges regulators to allow firms with reporting obligations to possess the ability to determine where to route trade records to meet trade reporting requirements to the appropriate regulator(s). There is a strong preference by reporting firms to build to one platform where firms can leverage existing workflows, such as electronic confirmation providers as the source of data, to maximize the quality of data reported. By centralizing such reporting through a global trade repository, reporting entities can adopt internationally recognized identifiers in describing the transaction identifier, product and legal entity name to ensure consistency of use and quality of inventory. Consequently, when firms have choice and can leverage global trade repositories to disseminate to appropriate regulators, it reduces the risks of duplication or omission in public reporting, limits the possibility of erroneous consolidation by the public of available data and reduces the burden on market participants to connect and reconcile to multiple trade repositories.

General Comments on the Consultation Paper

2(b) Governance

DTCC supports the Committee's recommendations that (1) policies be implemented to ensure commercial end-users are represented in the governance arrangements; (2) boards of directors be composed of individuals with an appropriate diversity of relevant skills and experience; and (3) boards of directors include appropriate independent representation. DTCC operates as a user-owned and governed, at-cost financial market service provider. DTCC supports the mitigation of conflicts of interest through the imposition of structural governance requirements designed to ensure an independent perspective on boards of directors and committees, along with broad representation from all classes of market participants. DTCC believes that structural governance requirements provide the best framework for reducing risk, increasing transparency and promoting market integrity within the financial system.

[3] CPSS-IOSCO – Consultative Report on Data Reporting and Aggregation Requirements (August 2011).

2(d) Operational Reliability

DTCC agrees with the Committee's assertion that "[t]rade repositories should take steps to manage operational risks including risks to data integrity, data security, business continuity and capacity and performance management." To promote transparent and stable financial markets, registered trade repositories must be able to demonstrate an infrastructure which supports critical operational capabilities. Specifically, DTCC recommends that trade repositories operate on a 24/6.5 basis to reflect the global nature of the financial markets, process transactions in real-time and maintain multiple levels of operational redundancy and data security. Given the importance of systemic risk oversight of financial markets and the critical role trade repositories will play in providing market transparency, a failure to demonstrate robust resiliency, security and redundancy in operations should preclude an entity from serving as a global repository.

(e) Access and Participation

DTCC supports the Committee's views that trade repositories should not adopt any policies or take any actions that constitute an unreasonable restraint on trade, impose material anticompetitive burdens on any market participants or unreasonably prohibit, condition, or limit access to its services. As a corollary, the Committee should also ensure that the trading platforms and clearinghouses are prohibited from taking similar practices (*e.g.*, not tying use of affiliated trade repository services to access clearing or trade execution). Given the ease with which any one provider, whether trading platform, clearing house or trade repository can disrupt the reporting implementation, it is essential that such prohibition on product or service bundling applies to all. Such model ensures that reporting entities can maintain choice of where to report trades based on cost and efficiency decisions without restraint on trade.

3.2 Who is Required to Report?

DTCC supports the Committee's view on assigning responsibility for transaction reporting to the counterparties to the trade, generally the financial intermediaries (collectively "reporting entities"). Reporting entities will want to reconcile their data to the trade repository to ensure data accuracy and complete inventory, as they assume the obligation for reporting. DTCC urges the Committee to ensure that the reporting entities maintain the choice over which approved trade repository to report to, even in the case where such obligation has been delegated to a third party, such as a central clearinghouse.

3.3(b) Mandating a Canadian Solution

DTCC does not believe that a Canadian trade repository is necessary when a global data repository exists and can comply with Canadian regulations. To effectively monitor system risk, the Canadian regulatory authorities must have access to both onshore and offshore activity for trades which have a nexus to Canada – either by currency or underlying reference entity. Such trades may be transacted by foreign counterparties who would not otherwise have reporting obligations to Canada. Given this cross border activity, key data for Canadian authorities would not be captured in a Canadian-based repository. Additionally, attempts to collect such cross-border data from other jurisdictions will prove challenging for the following reasons:

- Difficulty in ensuring complete and accurate data inventory. Duplicate trade reporting will occur when cross border activity is reported to multiple repositories. Further, there is no certainty as to what data inventory might be missing.
- Data standards may vary or evolve over time, making it difficult to aggregate data received from multiple repositories
- Heavily relies on bilateral information sharing agreements with all other foreign regulators to ensure a complete data inventory. It is likely that some trades will be captured in jurisdictions where no information sharing agreements are in place.

While DTCC appreciates the concerns raised by the Committee with respect to the absence of a central collector and aggregator of Canadian derivatives data located in Canada, DTCC believes that oversight of a foreign trade repository can be addressed either through (1) an equivalence structure as proposed by the E.U. where a foreign trade repository will be approved if it is "subject to effective supervision in a third country which has been recognised by the Commission, by means of an implementing technical standard adopted in accordance with Article 67d(1) as having an equivalent and enforceable regulatory and supervisory framework[4]"; or (2) dual-registration as proposed by the U.S. Commodity Futures Trading Commission registration final rules where a trade repository can submit itself to the jurisdiction to more than one regulator and indemnity and notice provisions would not apply[5]. DTCC would subject itself to the appropriate oversight to ensure Canadian regulators have all necessary access to the transaction data without legal or regulatory restraint.

In coordination with recognized information sharing guidelines, such as the ODRF or CPSS-IOSCO, DTCC GTR can operate to provide such information to Canadian regulatory authorities in any manner prescribed by the regulator (*e.g.*, web download access, direct data transmission or other means). This offers Canadian regulators (1) the ability to leverage existing connectivity to DTCC GTR to allow Canadian firms to meet reporting requirements in a timely manner; (2) receipt of full data inventory under statute or ODRF data access guidelines where currency or the underlying reference entity has a nexus to Canada; and (3) access to data captured through existing confirmation platforms, such as MarkitSERV for Interest Rate derivatives, and single-sided trades directly submitted to DTCC GTR.

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[4] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on OTC derivative transactions, central counterparties and trade repositories (Council text); Article 67(d) – 06 September 2011

[5] COMMODITY FUTURES TRADING COMMISSION, 17 CFR Part 49 RIN 3038–AD20, Swap Data Repositories: Registration Standards, Duties and Core Principles- see § 49.17(d)(3)

Reporting entities will benefit from the ability to leverage one reporting channel and build to one set of technology to meet global reporting requirements. This is of particular importance where banks are likely to take on the reporting requirements of their clients "as agents" necessitating compliance with regulations globally. The burden of building to numerous pipes and various message specifications will result in significant costs incurred, cause time delay and have an adverse implementation impact. A centralized reporting channel, such as DTCC GTR, will assist in alleviating these costs and implementation burdens, better ensuring compliance with internationally agreed upon data formats and identifiers.

However, if Canada determines to build a local repository, the DTCC model is flexible enough to support interoperability. Where a local trade repository is established, there are two potential scenarios for reporting: (1) recognition of the global trade repository as the agent reporting to the local trade repository; or (2) some reporting entities (*e.g.*, domestic firms) may opt to report directly to the local trade repository.

Recognition of Third-Party Agent

The local Canadian repository should recognize a third party agent, such as DTCC GTR, that could operate to route transaction records to the Canadian repository for the Canadian entities with reporting obligations. This would cover the full inventory of transactions where either or both counterparties are Canadian-based. This allows global dealers to leverage a common framework to submit their trades for their various entities and branches without having to separately build technical connectivity to other local repositories, thereby reducing time for dealers to comply through the leveraging of existing infrastructure. Such an arrangement also ensures a timely and cost effective implementation for the receiving local trade repository, as it leverages existing infrastructure in the submission of data. Such a model will ensure full data inventory without duplicates or omissions.

Common Data Standards and Reciprocity

Should the local repository also provide for reporting directly to its repository by its reporting entities, agreed upon data standards must be utilized in exchanging transaction records and reciprocity of data would be requested to enable interoperability with DTCC GTR.

The recent CPSS-IOSCO consultative report recognizes the challenges of establishing standardized data fields, also noting that those fields may change over time due to evolving nature of OTC derivatives products.[6] For this reason, DTCC would urge a local trade repository to work with DTCC to collaborate on data fields to ensure current and ongoing alignment as the product evolves. DTCC is actively working with the industry and planning to utilize FpML data standards in developing transaction templates. DTCC

[6] CPSS-IOSCO – Consultative Report on Data Reporting and Aggregation Requirements (August 2011), page 12.

also plans to utilize agreed upon international formats for representing legal entities ("LEIs"), product and transaction identifiers. However, in the absence of LEIs initially, DTCC will leverage its existing account Id's as a placeholder for subsequent mapping.

DTCC will also request the local trade repository submit a trade feed of local reported records into DTCC GTR for the purpose performing public aggregation. To ensure trades have not been duplicated, it will be essential that the local trade repository also leverage the industry adopted transaction identifier standard to ensure such transaction is not already in DTCC GTR's inventory. Where any trades are cross-border, either due to foreign counterparty, underlying reference entity or currency, DTCC contemplates that such transaction would be viewable by the respective regulator(s) with material interest. This will ensure that all regulators have equal and open access to the trades in the global trade repository where there is a nexus to their jurisdiction. Such symmetry to access is important, and DTCC expects it will be required by many jurisdictions. For example, the current requirement in draft E.U. legislation (where more than 60% of rates derivative turnover occurs) is "mutual access to, and exchange of, information on CCPs and on derivative contracts held in trade repositories which are established in that third country, in a way that ensures that Union authorities, including [the European Securities and Markets Authority], have immediate and continuous access to all the information needed for the exercise of their duties."[7]

3.4(b)(i) Creation Data

The Committee states that two types of data are to be provided in transaction reporting, principal economic terms and full signed legal confirmation. For legal confirmation, current matching service providers do not typically capture all legal terms as part of confirmation. Rather, certain fields will be denoted to cross reference the relevant signed master agreement without fully describing the fields in the electronically represented confirmation itself. Further, the Committee states that the confirmation data should be matched by the trade repository or third-party matching service. Matching of trades should be considered a distinct and ancillary service from the trade repository for the following reasons:

- Existing confirmation matching services may already exist that reporting entities will want to leverage in their submission to the trade repository.
- Cleared transactions should be considered pre-matched in submission to the trade repository.
- What remains are bespoke transactions – these transactions are not typically supported by confirmation matching services due to lack of uniformity in each transaction. DTCC recommends that the Committee consider an approach under which either the reporting entity can self-validate that the legal confirmation has been signed or the counterparty can validate the trade in the trade repository directly.

[7]Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on OTC derivative transactions, central counterparties and trade repositories (Council text); Article 67(d) – 06 September 2011

3.4(b)(ii) Continuation Data

DTCC recommends the Committee adopt a flexible approach in allowing reporting entities to provide transaction updates either through lifecycle event or snapshot data to ensure records are kept up-to-date. While lifecycle event data provides the granularity of viewing each event detail, the availability or complexity in capturing this information within and across an asset class is complex as it hinges on the centralized process that might exist to support the post-trade transaction processing, how the product itself operates and if multiple events could happen within a day and not be easily identifiable. As such, flexibility in either model would assure regulators that records have been updated to the current state under either approach.

3.4(b)(iii) Valuation Data

There are several approaches being considered in various jurisdictions regarding the capture of market value. One approach is requiring all necessary data elements to determine current market value or alternatively have the reporting entity provide their own market value for each position. However for collateral information, except for trade level initial margin, most collateral requirements are captured at the portfolio level which ensure firms can view their bilateral counterparty exposure risk. For ease of implementation, the Committee may want to consider allowing reporting entities to report such collateral information at a counterparty portfolio level.

Reponses to Specific Questions in the Consultation Paper

Question# 1: If the use of a Canadian trade repository were to be mandated should it be privately developed and operated for profit, privately developed and operated on a not-for-profit basis or should provincial market regulators perform this function directly?

DTCC believes that trade repositories should be privately developed and operated on a not-for-profit basis, rather than developed for profit or operated by provincial market regulators. As a private not-for-profit trade repository, DTCC and its clearing agency subsidiaries operate on an at-cost basis, charging transaction fees for services at levels sufficient to cover costs and provide for necessary reserves. Trade repositories that are privately operated on a not-for-profit basis promote greater access to aggregate market data, while avoiding potential abuses and conflicts of interest that may exist in the relatively small universe of trade repository service providers. Such industry cooperative repositories serve a critical market function in the collection, aggregation and dissemination of swap data, promoting transparency and supporting regulatory oversight. DTCC is concerned that a proliferation of provincial market regulators performing this function directly will impede global access to swap data, thereby jeopardizing market transparency.

General comments on Real Time Reporting:

In regards to the Committee's request for feedback on real-time reporting, DTCC's response to US regulators has been that the potential for misleading real-time price dissemination, with concomitant market disruptions and potential economic damage, should cause regulators to proceed with caution. The OTC derivative market has peculiar features which make it difficult to determine when a transaction is a price determining transaction and when not, what are the actual price relevant details (leading to the potential for lumping essentially different contracts into the same category), and what are the appropriate hedging periods. Additionally, in OTC derivatives markets, there will likely be more cancels and corrections after initial reporting than with other types of transactions.

Real-time reporting will also benefit from strong linkage to existing business processes, particularly linkage to trade capture and middleware or confirmation services. In some cases, the confirmation process is driving the booking of the trade into firms trade capture and risk systems and therefore represents the earliest point for feeding to a real-time reporting process. Real-time reporting would also benefit from additional integrity to error and omission reporting processes, with strong integration with existing business processes and subsequent reporting.

If Canadian regulators chose to adopt a real-time reporting requirement, DTCC would recommend an appropriate phase-in period during which only regulators receive reported data which otherwise would be disseminated in real-time to help discern the potential liquidity impact to the market prior to requiring such public disclosure of the data.

Conclusion

We appreciate the opportunity to comment on the Consultation Paper and look forward to continued dialogue with the Committee on this subject. Should you wish to discuss these comments further, please do not hesitate to contact me at 212-855-3240 or lthompson@dtcc.com.

Sincerely yours,

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