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April 29, 2011

Ms. Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File Number S7–8–11 / Clearing Agency Standards for Operation and Governance

Dear Ms. Murphy:

Markit[1] is pleased to submit the following comments to the Securities and Exchange Commission ("***SEC***" or the "***Commission***") on the proposed rulemaking to implement certain requirements included in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "***DFA***")[2] titled Clearing Agency Standards for Operation and Governance (the "***Proposed Rule***").[3]

Introduction

Markit views its role in the global derivatives markets as a service provider, offering independent data, valuations and related services for swaps and security-based swaps ("***SB swaps***") across many regions and asset classes in order to reduce risk and improve operational efficiency in these markets. As such, Markit supports the Commission's objectives of increasing efficiency in the OTC derivatives markets, detecting any abuse or manipulation, and of reducing both systemic and counterparty risk.

Executive Summary

As further discussed below, Markit believes that: (i) the Commission should not require clearing agencies ("***CAs***") to release confidential information about the inputs used for their settlement price calculations because such a requirement could have a detrimental effect on the ability to make a daily determination of clearing prices; (ii) fewer regulations should apply to CAs that do not provide central counterparty clearing services ("***non-CCP CAs***") than to central counterparty clearing agencies ("***CCPs***") because the nature and functions served by non-CCP CAs do not warrant many of the regulations applicable to CAs under the Proposed Rule; and (iii) the Commission should harmonize the Proposed Rule with the relevant regulations by the Commodity Futures Trading Commission ("***CFTC***") as the CFTC currently does not propose to regulate entities that would be regulated by the Commission as non-CCP CAs.

Comments

1. **CCPs Should Not Be Required to Publish Confidential Information Used As Inputs for Their Settlement Price Calculations**

The Proposed Rule would require each clearing agency that provides central counterparty clearing services for SB swaps to "make available to the public, on terms that are fair, reasonable, and not unreasonably discriminatory, all end-of-day settlement prices with respect to security-based swaps that the clearing agency may establish to calculate mark-to-market margin requirements . . . and any other pricing or valuation

[1] Markit is a financial information services company with over 2,000 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] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).
[3] Clearing Agency Standards for Operation and Governance, 76 Fed. Reg. 14472 (published March 16, 2011).

information with respect to security-based swaps as is published or distributed by the clearing agency to i[t]s participants."[4]

We believe that the publication of daily settlement prices for cleared SB swaps will create a substantial benefit in terms of public pricing transparency, and therefore agree with the proposal to require CCPs to publish clearing prices for SB swaps. We also agree that CCPs should be allowed to monetize the value of their settlement price data[5] as long as these charges are fair, reasonable, and not unreasonably discriminatory. For the sake of clarity, we encourage the Commission to clarify in the final rules that such access would also be granted to data vendors on an electronic and non-delayed basis.

However, the Commission also requests comment on whether there is "any other pricing information, such as with respect to valuation of security-based swaps" that should be required to be published.[6] We would like to stress that, if the Commission were to require "other pricing information" to be published, CCPs should not be required to publish any confidential information such as pricing and valuations data that is only provided to CCPs or to their participants on confidential terms. Based on our involvement in the determination of daily clearing prices for Credit Default Swaps ("***CDS***"), we believe that any requirement to publish such data would risk derailing the well-established process of determining the daily clearing prices for these products.

We therefore believe that the requirement for CCPs to publish pricing data should be limited to the actual daily settlement prices only, and should not extend, for example, to any price information or quotes that were provided as inputs for their computation. We request that the Commission clarify the scope of this requirement in its final rule.

2. Fewer Regulations Should Apply to Non-CCP Clearing Agencies than to CCP Clearing Agencies

The Commission notes that the Securities Exchange Act of 1934 (the "***Exchange Act***") defines a CA broadly as, in addition to providing CCP services, an entity that "provides facilities for the comparison of data regarding the terms of settlement of transactions"[7], *i.e.*, the non-CCP entities. The Commission further states in the preamble to the Proposed Rule that it believes "Tear up/Compression" service providers will fall within this definition. Tear up or Compression services consist of operating an algorithm, matching, and proposing terminations that are sent to a third party service provider for matching and are terminated in bulk. Such a Compression provider would act as an intermediary that provides facilities for the comparison of data.

We note that the DFA does not expressly require Compression providers or any other entities that do not provide clearing services to register as CAs or comply with any requirements applicable to CAs.[8] We therefore believe that the Commission is proposing to categorize Compression providers as CAs because of the original language codified in a 1975 amendment to the Exchange Act's definition of "clearing agency,"[9] and because of its interpretation of matching activities related to debt and equity securities.[10] We support the Commission in categorizing Compression providers as CAs inasmuch as doing so will ensure the proper functioning of the

[4] Proposed Rule, 76 Fed. Reg. at 14539 (to be codified at 17 C.F.R. § 240.17Aj-1).
[5] *See id.* at 14530 ("this information is not required to be made available to the public free of charge.").
[6] *See id.* at 14493.
[7] Securities Exchange Act of 1934 § 3(a)(23)(A).
[8] *See, e.g.*, DFA §763(b) (adding Exchange Act Section 17A(i)) ("To be registered and to maintain registration as a clearing agency *that clears* security-based swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule.") (emphasis added).
[9] The definition of "clearing agency" was added to the Exchange Act in 1975 by the Securities Acts Amendments of 1975, and, even at that time, included "any person . . . who provides facilities for comparison of data respecting the terms of settlement of securities transactions." *See* Pub, L. 94-29, 89 Stat. 97. The "comparison of data" contemplated under this amendment was clearly different than the high-speed, computer-based Compression services which the Commission proposes to include as clearing agencies.
[10] *See* Proposed Rule, 76 Fed. Reg. at 14495 & 14495 n.103 ("A vendor that provides a matching service will actively compare trade and allocation information and will issue the affirmed confirmation that will be used in settling the transaction.") (quoting Exchange Act Release No. 39829 (April 6, 1998), 63 Fed. Reg. 17943 (April 13, 1998)).

post-trade infrastructure in the SB swap markets and avoid the existence of regulatory gaps. We believe that a requirement for providers of Compression services for SB swaps to register as CAs, if appropriately structured, can play an important role in this respect.

However, as a provider of Compression services,[11] we do not believe that the wide-ranging registration and compliance requirements applicable to all CAs under the Proposed Rule are justified given the differences between Compression service providers and traditional CAs. Moreover, we are concerned that requiring non-CCP CAs such as Compression providers to comply with a full set of CA requirements could have unintended and detrimental effects on the SB swap market. We therefore urge the Commission to: (i) consider the significant costs of regulation for providers of Compression services; and (ii) create different regulatory requirements for Compression service providers and CCPs to account for their different market functions.

(i) The Cost of Registration for Compression Services Cannot Be Compensated By Any "Commitments" or "Requirements" to Use Them

The Proposed Rule requests comments on the costs for Compression services providers to register as CAs and operate as self-regulatory organizations.[12] It also asks whether these costs are "offset by regulatory requirements or industry commitments to use certain service providers" that fall within the definition of a CA.[13] Finally, the Commission asks for the implications of registration for these entities for the SB swap markets, and for the availability of their services to market participants.[14]

Compression activities only generate limited revenues today and most would expect demand for these services to be reduced in the future, so the additional cost of operating Compression services as registered entities could have a significant impact on their viability. Further, for the following reasons, we do not believe that the cost of registering as a CA would be offset by any industry commitments or regulatory requirements:

- Entities are sometimes chosen by "the industry" to provide services that enable market participants to satisfy certain regulatory and operational requirements. Such decisions are typically conducted in a competitive fashion through an RFP process to ensure that the most appropriate and competitively priced service is chosen from the various providers that submitted their service offers. One therefore cannot assume that the assignment of such role provides any excess benefits that the chosen provider could use to "offset" the cost of registration.

- The CFTC has proposed compression requirements that are triggered when derivatives clearing organizations ("***DCOs***") or self regulatory organizations ("***SROs***") offer Compression services, or when required by the Commission itself.[15] However, the Commission has not proposed similar requirements and, in any event, this is certainly not a "regulatory requirement" to use existing compression providers. Therefore, we fail to identify any future "regulatory requirement" to use such providers that could compensate for the potential cost of their registration.

Given the limited revenues that are generated by Compression services today, the additional cost of operating them as registered entities might make offering these services uneconomical. In the extreme, they might be

[11] Markit, in conjunction with Creditex, launched the first fully risk-neutral Portfolio Compression process for single name CDS in August 2008. To date, we have completed more than 200 weekly Portfolio Compression cycles in the United States and in Europe that included a total of 900 single name CDS and successfully removed a total notional amount of close to $7 trillion of economically redundant transactions.
[12] *See* Proposed Rule, 76 Fed. Reg. at 14496 ("What are the costs associated with requiring the types of entities described above that do not offer CCP services to register as a clearing agency and operate as an SRO?").
[13] *Id.*
[14] *Id.* at 14496-97.
[15] *See* Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 Fed. Reg. 81519, 81532 (published Dec. 28, 2010) (to be codified at 17 C.F.R. § 23.503).

discontinued. Such consequence could result in market disruption and an increase in risk in the SB swap markets.

(ii) Compression Services Should be Appropriately Regulated, and Should Not Be Subject to Provisions Designed To Only Apply To CCPs

The Commission requests comment on whether there are any requirements that should not apply to CAs that do not perform CCP services.[16] We strongly believe that non-CCP CAs, including Compression service providers, are fundamentally different from CCP CAs, and therefore warrant a different regulatory structure. In particular, we believe that non-CCP CAs should not be subject to the governance, access, and conflicts of interest regulations that will apply to CCP CAs because these regulations are all designed to curb potential problems that are inapplicable to non-CCP CAs. For example, issues related to conflicts of interest in general have little relevance to non-CCP CAs. "Participation" in compression services is driven by industry commitment for product, processing, and legal standardization, and the goals of these entities are to mitigate risk and attain the highest standards of operational efficiency. The implementation of Compression services for swaps, for example, is based on an industry collaborative process that is open to all market participants after thoughtful analysis related to product and process based on an overall cost-benefit analysis. We therefore believe that no conflicts of interest will arise relative to participation in these entities that would require the type of scrutiny that will be applied to CAs that offer CCP functions.

Indeed, the Commission provided a limited exemption from registration requirements for Omgeo for similar reasons. In its exemptive order, the Commission stated that "The exemptive order and the conditions and limitations contained in it are consistent with the Commission's statement in the Matching Release that an entity that limits its clearing agency functions to providing matching services does not have to be subject to the full range of clearing agency regulation."[17] The Commission was able to do so because the Exchange Act authorizes the Commission to exempt certain entities from registration as CA,[18] and the Commission provided exemptions for registered matching services for securities and their derivatives.[19] We believe that such exemptions and requirements are equally appropriate if Compression service providers are required to register as CAs. As a matter of precedence, then, we believe that the Commission can exempt non-CCP CAs from certain requirements applicable to other CAs.

Therefore, we believe that requirements related to governance, access, and conflicts of interest should not apply to Compression service providers if they are required to register as CAs.

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[16] *See* Proposed Rule, 76 Fed. Reg. at 14496.

[17] *See* Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, 66 Fed. Reg. 20494, 20498 (April 23, 2001).

[18] *See* Exchange Act § 17A(b)(1) (stating that the Commission may conditionally or unconditionally exempt a clearing agency from any provisions of section 17A or the rules or regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of section 17A).

[19] The Commission issued Operational Conditions in the Omgeo Exemptive Order which contain requirements that the company provide an audit report that addresses the areas in the SEC's Automation Review Policies (ARPs), provide the Commission with annual risk assessment reports that address the areas in the ARPs; provide the Commission with 20 days' notice of material changes in the regulated activities - prior approval not required; provide the Commission notice of systems outages greater than 30 minutes; to respond to SEC information requests and allow on-site inspections; provide the SEC with periodic reports on affirmation rates; preserve a copy of records for at least 5 years; do not provide clearing agency functions (such as net settlement) not permitted by the SEC exemptive order; and provide the SEC with copies of services agreements with affiliates, and notify of any material changes. Note there were also 19 "Interoperability Conditions". In addition, if there were material changes to statements made in the exemptive order application (such as changes to the Board or ownership structure) they would have to be filed with the SEC." *See* Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, 66 Fed. Reg. 20494 (April 23, 2001).

3. The Commission Should Harmonize Its Registration Requirements for Compression Services With The CFTC

Finally, we note that the CA registration requirement proposed by the Commission for Compression services finds no parallel in the rules proposed by the CFTC. The performance of these services in the SEC- and CFTC-regulated markets will be nearly identical, however, so there is no practical reason for such a large disparity in treatment of these different entities.

Regulating Compression service providers heavily in the SEC-regulated market but not in the CFTC-regulated market will likely create an unlevel playing field between competing providers of these services in the two markets and could, as a result, unintentionally discourage the provision of such services for SB swaps compared to swaps. Compression providers will be drawn to the unregulated market not only because of the lower cost of participation but because of the freedom associated with being an unregulated entity. As a result, competition for Compression services in the SEC-regulated market may be greatly damaged.

For example, to harmonize the rules, the CFTC may expand its own definition of a DCO to include non-CCP CAs that do not perform the "clearing" function; or similarly bifurcate the definition of a swap execution facility to provide for a sub-category of a trade processing facility that does not perform the "trading" function. Either way, a parallel regulatory structure will be established between the agencies, and similarly economically positioned entities will be similarly regulated under Title VII of the DFA.

Regulating Compression services under the SEC but not under the CFTC would also be a stark rejection of the recent Executive Order regarding Improving Regulation and Regulatory Review. In that order, the President stated that "[s]ome sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping," and therefore requires that, "[i]n developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote . . . coordination, simplification, and harmonization."[20] Regulating Compression service providers under the SEC but not under the CFTC is just the kind of inconsistent regulatory requirements proscribed by this Order, so we strongly urge the Commission and the CFTC to harmonize their rules.

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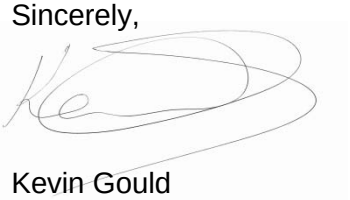
We appreciate the opportunity to provide these comments on this proposed regulation.

We thank the Commission 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.

[20] Exec. Order No. 13,563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821, 3822 (published January 21, 2011).