620 8th Avenue
35th Floor
New York
NY 10018
United States

tel +1 212 931 4900
fax +1 212 221 9860
www.markit.com

August 29, 2011

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

Re: **S7-25-11: Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants**

Dear Ms. Murphy:

Markit[1] is pleased to submit the following comments to the Securities and Exchange Commission (the "***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 Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants (the "***Proposed Rule***").[3]

Introduction

Markit is a service provider to the global derivatives markets, offering independent data, valuations, risk analytics, and related services for swaps and security-based swaps ("***SB swaps***") 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 DFA, and the Commission's objectives of increasing transparency and efficiency in the OTC derivatives markets, of reducing both systemic and counterparty risk, and of detecting any market manipulation or abuse.

Executive Summary

As explained below, we believe that: (i) the Commission should establish minimum requirements applicable to the means of communication utilized to deliver daily marks and should encourage the use of auditable and secure methods of communication; (ii) portfolio compression should be required for those products where the benefits outweigh the costs, which will depend on the number of transactions and total notional value for a given product that can be compressed; (iii) the Commission should establish standards applicable to providers of portfolio compression to ensure that they can adequately perform those services; (iv) security-based swap dealers and major security-based swap participants (collectively "***SBS Entities***") should not be obligated to provide scenario analysis unless the counterparty requests it because scenario analysis is most useful on the portfolio level; and (v) SBS Entities should be permitted to delegate any scenario analysis to appropriately-qualified third parties.

[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] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

[3] Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 76 Fed. Reg. 42396 (published July 18, 2011).

Comments

1. **Methods of Communicating Daily Marks**

The Commission stated in the Proposed Rule that it preliminarily believes that SBS Entities could satisfy their obligations to provide daily marks through the use of password-protected access to a website.[4] The Proposed Rule does not, however, provide any further guidance regarding the permissible means for communicating a daily mark. We believe that the Commission should provide greater clarity on permissible methods for delivering daily mark disclosures because requiring the provision of daily marks will only achieve the desired increase in transparency and reduction in systemic risk if they are effectively communicated.

In this regard, we believe that the Commission should establish minimum requirements applicable to any means of communication used for daily marks.[5] Specifically, we believe that the interfaces used to communicate daily marks should provide counterparties with appropriate tools to initiate, track, and close valuation disputes. Further, the Commission should require SBS Entities to ensure that the method of communication is designed to protect the confidentiality of the data and prevent any unintentional or fraudulent addition, modification, or deletion of a valuation record. Based on our experience, we believe that many market participants already recognize the need for measures which ensure that communications are sufficiently secure, timely, and auditable.

In response to the Commission's "preliminary" support of web-based methods of communication,[6] we would advocate for web-based systems to be the *preferred* method of communication. So long as these web-based platforms meet the conditions set forth in the Proposed Rule and other Commission regulations,[7] we believe that these systems would be more secure, less costly, more automatable, and quicker than other methods such as fax, telephone, or email. Therefore, we believe that the Commission should strongly endorse web-based means of communication.

However, we do not believe that these web-based systems should be exclusively required because some market participants, particularly end-users, may prefer to use more traditional methods of communication to receive daily marks from SBS Entities. In these cases, we believe that the Commission should require SBS Entities to have policies and procedures in place that reasonably ensure that non-electronic means of communication are safe and secure and are otherwise comparable to web-based systems.

2. **Portfolio Compression**

The Proposed Rule does not propose to require portfolio compression, but the Commission requested comment on whether this should be required and also on the current market practices among dealers for performing portfolio compression.[8]

We believe that portfolio compression should be required for certain SB swaps because it is an essential tool inasmuch as it allows counterparties to close out economically redundant transactions and other transactions

[4] *See* Proposed Rule, 76 Fed. Reg. at 42412.

[5] We note that the CFTC has proposed such a requirement by requiring daily marks to be communicated via "reliable" means as agreed to in writing by the counterparties. *See* Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 75 Fed. Reg. 80638, 80646, 80658 (to be codified at 17 C.F.R. § 23.402(f)) (published Dec. 22, 2010). However, we believe that this standard falls short of the specificity required for such communication, as well.

[6] *See* Proposed Rule, 76 Fed. Reg. at 42412.

[7] See Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Electronic Information, Securities Act Release No. 7288 (May 9, 1996), 61 Fed. Reg. 24644 (May 15, 1996). *See also* Use of Electronic Media, Exchange Act Release No. 42728 (Apr. 28, 2000), 65 Fed. Reg. 25843 (May 4, 2000).

[8] *See* Proposed Rule, 76 Fed. Reg. at 42439.

which do not otherwise serve a valuable economic purpose. Additionally, the Commission has proposed to require portfolio compression providers to register as clearing agencies[9] and, as explained in a previous comment letter (attached as Exhibit A),[10] the cost of registration could make the provision of portfolio compression services uneconomical due to the limited revenues currently generated by such services. Requiring portfolio compression under Commission regulations, therefore, would be one way of ensuring that these important services continue to be viable.

However, we understand from experience that portfolio compression can involve substantial costs and, in some cases, only provide limited benefit. We therefore believe that the Commission should require portfolio compression only when the benefits outweigh the costs. As further explained below, we believe that the benefits of compression increase as the trading volume and notional volume of a given product increases, so SBS Entities should be required to engage in compression when certain volume-based thresholds for a given product are exceeded. Importantly, however, we believe that the Commission should ensure that portfolio compression providers are appropriately qualified, which it can do by requiring them to register as clearing agencies.

a. History and Current Market Practice of Portfolio Compression

The concept of removing economically redundant transactions from portfolios of financial instruments dates back to the 1980s, but serious attempts to perform regular portfolio compression have only been initiated in the last decade. Particularly in the past few years, compression has become a key tactical solution for reducing regulatory capital and operational risk. For example, it has been part of G14 commitments for the credit and interest rate swaps markets.[11]

The first swap compression services were not risk-neutral. As a result, participation was limited because participants were left with a changed risk profile after the netting rounds. Markit, in conjunction with Creditex[12], addressed this issue by launching the first fully risk-neutral portfolio compression process for single name Credit Default Swaps ("***CDS***") in August 2008, which enabled participants to complete a portfolio compression cycle without any change in their risk profile. Because a much higher level of participation and compression efficiency can be achieved through such multilateral risk-neutral portfolio compression approach, it has established itself as the standard for CDS indices and single-names. 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. This compression activity has successfully removed a total notional amount of close to $7 trillion of economically redundant single name CDS transactions.

b. The Costs and Benefits of Portfolio Compression

(i) *Costs*

Based on our experience, the operational and technological preparation required for portfolio compression cycles can be very demanding. Processes and procedures must be established by each counterparty to allow efficient and timely validation and execution. This will typically require changes to a participant's risk systems and connectivity enhancements to platforms in order to facilitate the confirmation of the transactions executed as a result of the compression cycle. For example, some of the compression cycles that we perform create the need for participants to book and process up to 5,000 single name CDS transactions on a single day. This

[9] *See* Clearing Agency Standards for Operation and Governance, 76 Fed. Reg. 14472, 14495-96 (published March 16, 2011).

[10] *See* Letter from Markit to the Commission at 2-4 (April 29, 2011).

[11] A table summarizing the Commitments of the G14 Dealers to regulatory authorities can be found on www.newyorkfed.org/newsevents/news/markets/2010/100301_table.pdf.

[12] *See* ISDA News Release dated July 2, 2008, available via www.isda.org/press/press070208.html.

represents a significant operational challenge, particularly in light of the 40,000 CDS transactions that are executed on average per month.[13]

These costs would not seem to be significant for the most active dealers because they already participate in regular compression cycles for certain SB swaps today. However, they would be significant for SBS Entities who do not currently participate in portfolio compression cycles and for all SBS Entities to the extent that portfolio compression is required for new products.

(ii) *Benefits*

Generally, the potential to remove economically redundant transactions for a given product depends on several product-specific variables. These are, for example, the number of counterparties with outstanding SB swap positions, the total number of outstanding SB swap transactions in the product, the number of transactions held by each counterparty, the amount of ongoing trading activity, and the differences between transactions.

Moreover, we have found that the actual amount of compression that can be achieved will often deviate significantly from the gross potential to compress for several reasons. First, even though portfolio compression is risk-neutral related to the underlying risk, the exposure to individual SB swap counterparties participating in a given cycle is not. The amount of compression that can be performed will therefore often be limited by counterparty risk limits. Second, many SB swap positions cannot be characterized by the use of standard trades and therefore cannot be compressed.[14] Third, participants will often use SB swaps as specific hedges against other positions, and must therefore withhold such transactions from compression cycles. The combination of these, and other, factors implies that the potential to actually compress transactions can be fairly limited, and the compression benefit for many asset classes and products will often not justify its cost. Of note, portfolio compression was recently attempted in asset classes such as commodities and foreign exchange but was not pursued further because the trial cycles had limited success.

c. <u>The Commission Should Require Portfolio Compression Where the Benefits Outweigh the Costs</u>

We believe that risk-neutral portfolio compression for centrally cleared SB swaps will almost always be worth the cost because such compression is fairly straight-forward. Therefore, the Commission should require portfolio compression of all such transactions.

For all other, non-cleared SB swaps, we believe that the Commission should establish thresholds based on the number and notional amount of transactions, and require portfolio compression for a given category of SB swaps only when such thresholds are breached because the benefits of portfolio compression are tied to the volume of transactions for a given product. Thus, if transactions in a given product exceed a notional amount determined by the Commission, any existing portfolio compression cycles should continue or new portfolio compression efforts should be initiated.

Even when portfolio compression is required because volume thresholds are exceeded, however, we believe that such requirements should vary in terms of frequency depending, again, upon the benefit provided by portfolio compression for a given product or category of SB swaps based on a more granular set of volume-based criteria. We have provided portfolio compression cycles in this way for several years. For example, we have performed portfolio compression cycles for single name CDS on a weekly basis for the last two and a half years. Typically, up to 50 reference entities are included in any given cycle, and each single name credit is part

[13] *See* the Quarterly Metrics for further details related to average monthly volumes of the G14 dealers, available on http://www.markit.com/en/products/research-and-reports/metrics/metrics.page.

[14] For example, it might not be possible to re-create an existing deeply in- or out-of-the-money net swap position by using standard swaps.

of a compression cycle every 2 to 6 months, depending on activity in that name. We continue to see sufficient interest from market participants in these exercises and therefore plan to continue offering portfolio compression cycles with such frequency going forward.

d. The Commission Should Establish Standards Applicable to Providers of Compression Services to Ensure that They Have the Necessary Competency

Portfolio compression must be done accurately, competently, and subject to the Commission's supervision; otherwise it could increase, rather than decrease, counterparty and market risk. In our experience, this requires a robust front-end, the development of sophisticated algorithms, and expertise at delivering specific parts of the service. For example, for a participant that has a multitude of different trading desks, portfolio compression providers must construct algorithms to ensure that the results of the compression leave the participant and all of its individual desks risk neutral. In addition, we believe that the services must be provided by a regulated entity such as a registered clearing agency to ensure that compression is performed accurately.

We therefore believe that, if the Commission requires portfolio compression to any extent, it should also ensure that providers of such services are competent, accountable, and have sufficient resources to support services and participants. In this regard, as we stated in a previous comment letter (attached as Exhibit A),[15] we support the Commission's proposal to require compression service providers to register as clearing agencies[16] because doing so will ensure the proper functioning of compression services. We reiterate, however, that we do not believe that the wide-ranging registration and compliance requirements applicable to all clearing agencies should be applied to compression service providers because of the significant differences between compression service providers and traditional clearing agencies that provide central counterparty clearing services.[17]

3. Scenario Analysis

The Proposed Rule does not require SBS Entities to provide scenario analyses to counterparties, but the Commission requested comment regarding whether this should be required as part of an SBS Entity's disclosure obligations.[18] As a preliminary matter, we do not believe that SBS Entities should have any obligations to provide scenario analysis to a counterparty which is also an SBS Entity. We believe that these entities are generally sophisticated enough to create their own analysis, which can be based on their whole portfolio instead of the individual swap, and therefore would be more meaningful.

When SBS Entities transact with non-SBS Entity counterparties, however, we believe that scenario analyses can help the counterparty to understand a SB swap's dynamics and assess potential exposure. However, we believe that scenario analysis is most useful when it is based on a counterparty's whole portfolio instead of just the individual transaction. Because we believe that the real usefulness of scenario analysis is on a portfolio level, but SBS Entities cannot provide their counterparties with such portfolio-level scenario analysis, we do not believe that the Commission should explicitly require SBS Entities to provide scenario analyses for all SB swaps on a transaction level.

Instead, we suggest that the Commission require SBS Entities to provide a scenario analysis if it is requested by a counterparty that is not an SBS Entity, and to notify such counterparty of its right to receive a scenario analysis. This way, SBS Entities will not be required to spend time and resources on scenario analyses when the counterparty does not find such analysis beneficial. At the same time, however, we believe that the

[15] *See* Letter from Markit to the Commission at 2-4 (April 29, 2011).

[16] *See* Clearing Agency Standards for Operation and Governance, 76 Fed. Reg. 14472, 14495-96 (published March 16, 2011).

[17] *See* Exhibit A.

[18] *See* Proposed Rule, 76 Fed. Reg. at 42409.

Commission should encourage all market participants to create or obtain a portfolio-level scenario analysis. We note that this is in keeping with industry best practices as detailed in a report by the Counterparty Risk Management Policy Group.[19]

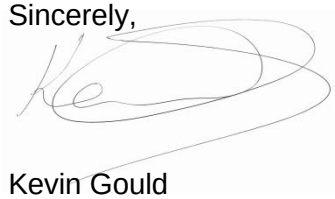
To mitigate SBS Entities' costs associated with providing scenario analysis, we believe that the Commission should also permit SBS Entities to delegate to appropriately qualified third parties any responsibilities to provide scenario analyses. Using these third parties would result in transparent, verifiable, consistent and useful information being provided to counterparties, and would alleviate any need for SBS Entities to disclose any proprietary information.

* * * * *

We appreciate the opportunity to provide these comments on these proposed regulations.

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.

[19] *See* The Counterparty Risk Management Policy Group, ''Containing Systemic Risk: The Road to Reform, The Report of the CRMPG III" at 82-84 (Aug. 6, 2008) (''CRMPG III Report''), available at *www.crmpolicygroup.org* (stating that, among other things, "The Policy Group recommends that credit risks be viewed in aggregate across exposures, giving full consideration to the effects of correlations between exposures.").

Exhibit A

See attached.

620 8th Avenue
35th Floor
New York
NY 10018
United States

tel +1 212 931 4900
fax +1 212 221 9860
www.markit.com

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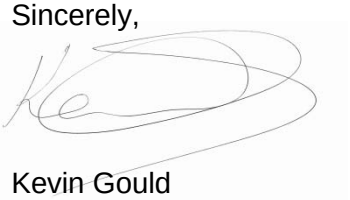
We appreciate the opportunity to provide these comments on this proposed regulation.

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).