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September 19, 2011

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

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

Re: CFTC and SEC Staff Public Roundtable on International Issues relating to Dodd-Frank Title VII

Dear Mr. Stawick and Ms. Murphy:

Markit[1] is pleased to submit the following comments to the Commodity Futures Trading Commission (the "***CFTC***") and the Securities and Exchange Commission (the "***SEC***" and, together with the CFTC, the "***Commissions***") on international issues relating to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "***DFA***").[2]

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 Commissions' 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

The swaps and SB swaps markets are international by their very nature. Regulating these markets therefore presents novel and unique obstacles because various national regulations must align to create a level of global cohesiveness that is not typically required of domestic regulations. Because each nation will create their own laws and regulations, however, fully cohesive rules will likely be impossible to achieve. As CFTC Commissioner Scott O'Malia recently stated in relation to the IOSCO report (September 2011) on *Principles for the Regulation and Supervision of Commodity Derivatives Markets*, "while each IOSCO member supports the organization's general principles, each member may have widely different interpretations of exactly what regulations would accord with such principles."[3] The same will likely hold true with regard to all international regulators in the process of setting their rules and technical standards: even if regulators can agree on principles regarding the regulation of derivatives markets, their practical application of those principles will likely differ to a great extent from one jurisdiction to another.

While regulatory differences are therefore somewhat inevitable, these differences could threaten the effectiveness of derivatives regulations if, for example, they result in establishing reporting regimes that

[1] Markit is a financial information services company with over 2,300 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] *See* Opening Statement by Commissioner Scott D. O'Malia (Sept. 8, 2011), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/omaliastatement090811.html.

produce data that cannot be effectively consolidated and aggregated for systemic risks purposes. It could also damage market functioning if participants are subject to conflicting regulations. We therefore urge the Commissions to harmonize their regulations with those of international regulators to the extent possible and, where this is not possible, to recommend the use of internationally-operating third party service providers as they can facilitate compliance of market participants with varying regulatory regimes in both a timely and a cost-effective fashion.

Specifically, we believe that the Commissions should: (1) ensure that important aspects of their real-time reporting regimes, including the data to be reported, are in harmony with those required by foreign regulators; (2) permit market participants to use third party providers that operate internationally for valuation and scenario analysis services because these entities would use internationally valid standards and inputs; (3) permit market participants to delegate initial margin ("***IM***") calculation to third parties that operate internationally because they could provide would-be counterparties with estimates of IM based on different national requirements; (4) ensure that any unique identifier systems used for reporting purposes are used consistently across the globe in order to enable data to be properly aggregated, and that the creation of such systems is open to input from all stakeholders; and (5) permit market participants to obtain a legal entity identifier ("***LEI***") through a self-registration process or from a counterparty who would act as their agent in the registration process.

Comments

1. **The Commissions Should Harmonize Their Real-Time Reporting Regimes with Those of International Regulators**

Participants in the swaps and SB swaps markets who operate internationally are likely to be exposed to dozens of national reporting regimes for swap transaction data that could vary in scope, timing, and contents. In the United States for example, the Commissions have proposed requirements related to real-time reporting which already differ in several aspects.[4] Outside of the United States, real-time reporting requirements will almost certainly differ to an even larger extent. However, because of the great degree of cross-border activity in the swaps markets, post-trade reporting of swap transactions will be most useful if it results in providing a comprehensive picture of activity in a category of swaps independent of the location of execution or the nationality of the counterparties.

In order to do so accurately, however, the various national reporting regimes must be harmonized at least to some extent. We understand that complete harmonization between several post-trade reporting regimes will be nearly impossible. Therefore, we urge the Commissions to focus on ensuring harmonization of certain key aspects of real-time reporting so that the publicly disseminated information can be aggregated. Specifically, we believe that the Commissions should work with foreign regulators that plan to create their own real-time reporting regimes to harmonize their requirements regarding the timing of dissemination and the data to be disseminated. We believe that the Commissions should ensure that the reported information is at least sufficiently granular and comparable, *e.g.*, it contains a sufficient level of detail and uses a common definition of data fields. With this type of information, internationally-operating data providers would be able to aggregate and display data of international transaction activity to market participants, while avoiding double counting of transactions.

[4] For example, while the CFTC has proposed to require SDRs to delay any public dissemination of block trade information for a certain amount of time, the SEC has proposed to require SB SDRs to publicly disseminate certain information immediately upon receipt and to only delay dissemination of the notional size and transaction identifier. *Compare* Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 76176 (to be codified at 17 C.F.R. § 43.5(k)(2)), *with* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75208, 75285 (to be codified at 17 C.F.R. § 242.902(b)).

2. Market Participants Should Be Able to Use Internationally-Operating Third Parties for Valuation and Scenario Analysis Services Because These Entities Use Consistent Standards for These Services

The Commissions have proposed business conduct standards which would require swap dealers ("***SDs***") and major swap participants ("***MSPs***") to agree with their counterparties on the inputs, methods, and fallbacks to produce a daily valuation and scenario analyses.[5] Again, these requirements will be complicated when applied to international transactions because standards for valuations and scenario analysis tend to vary across regions and underlying instruments. This will create a significant challenge for aggregating risk measures and performing analysis on a portfolio basis, especially for portfolios that include international transactions across various asset classes.

Certain third parties currently provide valuations and scenario analyses on an international basis, however, and do so according to clearly defined, consistent methodologies and sets of inputs. We therefore believe that these independent third party providers could help to ensure that valuations and scenario analyses are consistently applied across the globe. This consistent application could be achieved, for example, by permitting counterparties to reference inputs, methodologies, fallbacks, or the actual valuations and scenario analysis that are provided by independent third-party providers. Utilizing internationally-operating third parties in this way will benefit market participants and regulatory authorities. Regulatory authorities would benefit, for example, by being better able to aggregate exposures or compare risk that U.S. entities take on or are exposed to overseas. This would also tend to result in the use of independent valuations, which market best practice and regulatory expectations increasingly require.[6] We therefore request that the Commissions explicitly permit market participants to use third parties that operate internationally for valuation services and to provide scenario analyses.

Further, in the international context it is critical that consistent and appropriate standards apply also to the means of communicating information such as daily marks or scenario analysis. We believe that the use of appropriately secure and auditable platforms that satisfy a set of internationally agreed standards[7] should be required to communicate the large number of daily marks. Only such approach will enable international regulators to track communications and investigate any unresolved disputes in a timely and efficient manner.

3. Market Participants Should Be Able to Delegate Initial Margin Calculation to Internationally-Operating Third Parties

The CFTC and Prudential Regulators have proposed rules to require SDs and MSPs to collect IM from most of their counterparties when entering into swaps or SB swaps that are not centrally cleared.[8] Given

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[5] *See* Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 75 Fed. Reg. 80638, 80658-59 (published Dec. 22, 2010) (to be codified at 17 C.F.R. §§ 23.431(a)(1), (c)) (CFTC requiring the provision of a scenario analysis and a daily mark in certain circumstances, respectively); Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 6715, 6726 (published Feb. 8, 2011) (CFTC requiring agreement on the methods, procedures, rules, and inputs for determining the value of each swap at any time from execution to expiration); Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 76 Fed. Reg. 42396, 42454 (published July 18, 2011) (to be codified at 17 C.F.R. § 240.15Fh-3(c)) (SEC requiring the provision of a daily mark in certain circumstances); *id.* at 42409 (questioning whether the SEC should require the provision of a scenario analysis).

[6] Reference FSA risk management practices for fund managers document. *See* http://www.fsa.gov.uk/pubs/guidance/gc10_07.pdf.

[7] The means of communication should be sufficiently secure, auditable, robust, and scalable. *See* Letter from Markit to the SEC at 2 (Aug. 29, 2011) (responding to the SEC's proposed rule on Business Conduct Standards).

[8] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 23732 (published April 28, 2011); Margin and Capital Requirements for Covered Swap Entities, 76 Fed. Reg. 27564 (published May 11, 2011).

that such requirement is part of the G20 commitments,[9] similar requirements should be expected from the SEC and international regulators.

The amount of margin that will be required is a significant factor for potential counterparties to consider before entering into a transaction, though, and differing approaches to calculating margin requirements among regulators will make it challenging for would-be counterparties to accurately estimate these requirements. Internationally-operating qualified third party providers of risk analytics services, however, can make use of IM models that accommodate any and all regulatory requirements. If counterparties use these third parties for IM calculation, then, they can also refer to the third party's model to estimate the IM requirement for a would-be transaction. The method of using qualified third party services providers would be easier than, for example, requesting an IM quote from every would-be counterparty (which would likely be based on a variety of proprietary models).

We therefore believe that the Commissions should explicitly permit counterparties to delegate IM calculation to qualified third party providers that are familiar with various approaches to IM calculation methodologies.

4. Legal Entity, Product, and Transaction Identifiers Must Be Internationally Consistent and Developed Through Collaboration With Industry Groups

The Commissions have, in various rules, established requirements for the creation of unique identifiers for entities, products, and transactions and their use in the swaps and SB swaps markets.[10] We believe that, in order to be most useful, one must ensure that any such identifiers are used internationally on a consistent basis.[11] Otherwise, the Commissions will be unable to use these identifiers to account for duplicative reporting which is likely to happen due to mandatory reporting in multiple jurisdictions. Moreover, without consistently-applied identifiers, the Commissions will be unable to obtain information about any individual's global aggregate positions, which will be critical information in mitigating systemic risks.

Additionally, based on our experience operating the Reference Entity Database ("***Markit RED***")[12] we believe that the success of identifier initiatives will depend on receiving input and commitments from all relevant stakeholders. We therefore urge the Commissions to actively engage with international regulatory authorities as well as with the OFR, industry associations, financial market participants, end users and service providers/data vendors globally.

We also believe that it will be important to create an extensive database to warehouse data regarding legal entity identifiers ("***LEIs***") that can be accessed and used across the globe. This will help local regulators to use the LEI system to gain a view of the global market. For example, it will help regulators aggregate positions across several "local" SDRs that are located in different countries and capture transactions from the same institutions. We therefore urge the Commissions to continue their efforts in establishing a globally

[9] *See* The G-20 Toronto Summit Declaration (June 26-27, 2010) ("we agreed to pursue policy measures with respect to haircut-setting and margining practices for securities financing and OTC derivatives transactions that will reduce procyclicality and enhance financial market resilience.").

[10] More specifically, the CFTC will require regulatory reporting of unique swap identifiers, unique counterparty identifiers, and unique product identifiers. *See* Real-Time Public Reporting, 75 Fed. Reg. at 76587-92. The SEC will require reporting to contain transaction identifiers, a counterparty identifier of each counterparty, and, as applicable the broker ID, desk ID, and trader ID of the reporting party or its broker. *See* Regulation SBSR, 75 Fed. Reg. at 75221.

[11] We believe that the Commissions and foreign regulators should use a central database that contains the identity of market participants and the associated legal entity identifier in order to ensure that these identifiers are consistently utilized.

[12] Markit RED provides a legally verified reference data service for the credit derivatives market. The product coverage encompasses a range of corporate, supra-nation, sovereign, state and regional entities from over 120 jurisdictions.

harmonized approach to creating such identifiers. Naturally Markit is willing to support and work with all market participants whatever the ultimate shape and form of LEI system may take.

Further, we recommend that the Commissions, in coordination with industry and international regulators, ensure that information regarding the LEI initiative is publicly available in a central location because this will help in achieving global agreement on LEI standards. Currently, the relevant information regarding the LEI initiative is located in various places, including several websites. We believe that a consolidated web-portal should be created that contains all of the relevant information, such as contact details, forums, and up-coming meetings.[13] This would increase the transparency of the process and, we believe foster the development of a global community of interested parties.

5. Several Easy To Use Mechanisms To Acquire and Distribute LEIs Should Be Offered

We believe that the LEI system must be universally adopted across jurisdictions, or at least by a critical mass of market participants, in order to be successful. To achieve this goal, we believe that multiple easy-to-use "paths" to receive an LEI should be provided to entities. In this regard, market participants must be able to obtain LEIs through self-registration and agent sponsorship. Through a self-registration process, market participants should be able to obtain an LEI through a user-friendly website that guides the user step-by-step through the relevant requirements for obtaining an LEI. Through an agent sponsorship process, dealer counterparties should be able to register their counterparties for an LEI as an agent of that counterparty. Agent sponsorship could be performed either on the basis of a bulk counterparty list or via the self-registration website. We strongly believe that both these choices need to be provided because some end-users will not have the time or resources to obtain an LEI themselves, and other market participants may find it more efficient to obtain an LEI through their counterparty. Furthermore, in addition to functioning as mechanism for LEI applications, a user-friendly website should also be used to disseminate LEIs and their associated source data/documentation.

We believe that the above mechanisms for acquiring and disseminating LEIs should be created early on because this will make the broad usage of the LEI standard more likely.

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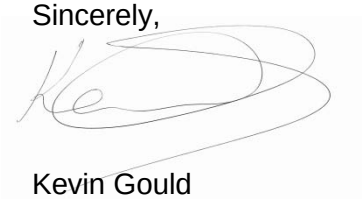
We appreciate the opportunity to provide these comments on the international application of the Commissions' proposed rules.

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.

[13] Importantly, this website should make key documents available in multiple languages.