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Bank Negara Malaysia
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P.O. Box 10922
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Re: **Concept Paper on Recordkeeping and Reporting Requirement for Over-The-Counter Derivatives**

Dear Sir/Madam,

MarkitSERV[1] is pleased to submit the following comments to the PIDM and the Bank Negara Malaysia (together the "**Regulators**") in response to their concept paper on the Recordkeeping and Reporting Requirement for Over-the-Counter Derivatives (the "***Concept Paper***" or "***CP***").[2]

Introduction

MarkitSERV is a provider of confirmation, connectivity, and reporting services to the global OTC derivatives markets, making it easier for participants in these markets to interact with each other. Specifically, we provide trade processing, confirmation, matching and reconciliation services for OTC derivatives across regions and asset classes, as well as universal middleware connectivity for downstream processing such as clearing and reporting. Such services, which are offered also by various other providers, are widely used by participants in these markets today and are recognized as tools to increase efficiency, reduce cost, and secure legal certainty. With over 2,400 firms globally using the MarkitSERV platforms, including over 25,000 buy-side fund entities, our legal, operational, and technological infrastructure plays an important role in supporting the OTC derivatives markets in Asia, Europe, the United States, and elsewhere.

MarkitSERV has had a significant presence in Asia for many years. Currently more than 30 of our employees are located in the APAC region that accounts for more than 20% of our global revenue. We are also keen on further developing our relationships in Malaysia, both with potential users of our confirmation and connectivity services and with the relevant regulatory authorities.

By integrating electronic allocation, trade confirmation and portfolio reconciliation MarkitSERV provides a single gateway for the processing of OTC derivatives transactions. Based on our experience as provider of connectivity and processing services, we have been actively and constructively engaged in the debate about Regulatory Reform of the global OTC derivatives markets and the implementation of the Pittsburgh

[1] MarkitSERV, jointly owned by The Depository Trust & Clearing Corporation (DTCC) and Markit, provides a single gateway for OTC derivatives trade processing. The company offers trade processing, confirmation, matching, and reconciliation services across regions and asset classes, including interest rate, credit, equity, and foreign exchange derivatives. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, CCPs, and trade repositories. In 2011, over 20 million OTC derivative transaction processing events were processed using MarkitSERV. Please see www.markitserv.com for additional information.
[2] PIDM and Bank Negara Malaysia Concept Paper BNM/RH/CP 018-05: Recordkeeping and Reporting Requirement for Over-the-Counter Derivatives. 26 March 2012.

G20 commitments.[3] Over the last 18 months we have submitted over 50 comment letters to regulatory authorities around the world and we have participated in numerous roundtables. We regularly provide the relevant authorities with our insights on current market practice, for example in relation to the electronic confirmation of OTC derivatives transactions, efficient ways of reporting them to Trade Repositories ("***TRs***"), or the reconciliation of existing portfolios of such transactions. We have also advised regulatory authorities on appropriate approaches to enabling a timely and cost-effective implementation of newly established requirements, for example through the use of multi-layered phase-in or by providing participants with a choice of means for satisfying regulatory requirements.

We welcome the Regulators' plans to design and establish legislation to better regulate the OTC derivatives markets in Malaysia. We also appreciate the opportunity to comment on the proposed recordkeeping and reporting requirements and their implementation. Please find below (1) a general description of current market practices for (1.1.) the confirmation of OTC derivatives transactions and (1.2.) connectivity provision, followed by (2) specific comments in relation to (2.1.) efficient arrangements for the reporting of OTC derivatives transactions to Trade Repositories, (2.2.) the need for a phased-in implementation of the various requirements, (2.3.) data fields to be reported to TRs, and (2.4.) portfolio reconciliation.

1. Current market practice

1.1. Confirmation of OTC derivatives transactions

The process of documenting an OTC derivatives transaction following its conclusion generally involves trade enrichment,[4] trade affirmation/matching of material trade terms negotiated between counterparties,[5] and attachment to legal framework. These three steps are present in the "confirmation" of the vast majority of all OTC derivative transactions, regardless of the execution method (*i.e.* via bilateral paperwork, telephone, voice-brokered, or executed on an electronic execution platform), whether transactions are centrally cleared or not, and whether they are confirmed electronically or through other means. MarkitSERV is one of the services that facilitate the confirmation of OTC derivatives transactions, and we do so in various asset classes by the use of different techniques.

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[3] "Leaders' Statement: The Pittsburgh Summit" (Sept. 24-25, 2009), available at http://www.g20.org/pub_communiques.aspx.

[4] Transactions in OTC derivatives are typically executed by agreeing only the main economic terms of the transaction (such as pricing and notional size), with other economic details only explicitly agreed where they vary from accepted market practice (for example payment frequency, business day conventions, defaults, disruption fallbacks, termination events and termination calculation methodology, and holiday calendars), and additional terms which are specific to the terms of the counterparty relationship (for example master agreement reference or other credit terms). However, confirmations of these transactions must contain all of this information as best evidence of the trade. The process of adding additional information to the execution details to create a complete documentation of all terms of the OTC derivatives transaction is known as "trade enrichment". The extent to which trade enrichment is required depends on the complexity of the transaction type and the form of legal framework under which the transaction is confirmed. Trade enrichment can happen through a variety of means, including trade capture systems and automated confirmation services such as the ones provided by MarkitSERV.

[5] Counterparties to an OTC derivatives transaction typically use affirmation, matching, or some combination of the two methods to agree that the fully enriched set of transaction details accurately records the execution intent. In the affirmation method, one party alleges the details of the OTC derivatives transaction to its counterparty. The counterparty will then check or verify these details and, if appropriate, affirms that they are correct. For transactions that are facilitated through an intermediary, *e.g.* an inter-dealer broker or an electronic trading system, the intermediary may propose the transaction details to both parties, who then affirm them with each other. As part of the matching method, both counterparties to the OTC derivatives transaction allege the transaction details to each other, which are then compared. The comparison can be performed in a centralized fashion, *i.e.*, "central matching" through electronic matching services such as those provided by MarkitSERV. It can also be performed in a localized manner, where one or both counterparties make their own comparison and notify the other party of any discrepancies. Affirmation and local matching can also be used together, where the party who receives alleged details of the OTC derivatives transaction will perform a local match to its satisfaction, and then affirms to their counterpart. When one of the automated electronic services, such as MarkitSERV, is used to affirm or match details of an OTC derivatives transaction, the service provides notification to both parties when the process of affirmation or matching is complete, thereby completing the confirmation process. The service will also be used as a means to communicate and rectify any discrepancies prior to completing the confirmation. Current market practice includes confirmation of trade life-cycle events, varying amongst asset classes, but including, for example, negotiated full and partial terminations and full and partial novations.

The Regulators should be aware of the fact that, over the last several years, regulatory authorities in major jurisdictions have focused increased attention on the timely and accurate confirmation of transactions in OTC derivatives, preferably in electronic format, in order to reduce systemic risks in these markets. Both the percentage of eligible transactions that are processed on an electronic platform and the timeliness of their submission have been part of the ongoing industry commitments to the Federal Reserve Bank of New York. The relevant targets differentiated between asset classes to reflect the differences in their size, their product and participant variety, and levels of product standardization.[6]

More recently, requirements proposed in some jurisdictions would set a maximum time period following execution within which counterparties will have to confirm the transaction.[7] We do not believe that such aggressive requirements are appropriate, nor do we believe that compliance with such requirements might always be feasible given the market realities. In any case, we believe that, if regulatory authorities want to ensure the timely confirmation of all transactions in OTC derivatives, they should allow counterparties to use various methods, including facilitation by third-party platforms, for the processing of these transactions.

1.2. Provision of connectivity services in the OTC derivatives markets

In today's OTC derivatives markets, various CCPs offer central clearing services, execution takes place via a multitude of methods and venues, and transactions are reported to several Trade Repositories. To ensure the proper flow of data between these multiple venues, the effective establishment of robust connectivity between them is absolutely essential. The Regulators should note that an operational infrastructure has evolved where specialized Independent Verification Services ("***IVSs***") such as MarkitSERV establish and maintain universal, timely and secure connectivity between execution venues, clearing venues and other post-trade service providers.[8] OTC derivatives transactions are communicated to IVSs either directly by the counterparties to a bilaterally executed trade, by electronic platforms where the trade was executed or by interdealer brokers who arranged the transaction. IVSs not only route the transactions for clearing but also provide transaction counterparties with notifications as to the transaction's status (*e.g.*, whether it has been received, registered, or rejected by the DCO), which is important for risk management.

2. Specific Comments

2.1. Reporting to Trade Repositories

Question J: What would be the most efficient alternative arrangements for collecting OTC derivatives information going forward? What is your view on the use or enhancements to existing financial market infrastructure to capture OTC derivatives information?

We welcome the Regulators' desire to further explore and identify the most efficient and least costly arrangement for collecting OTC derivatives information, and the fact that they consider the use of or enhancements to existing financial market infrastructure in order to enable counterparties to comply with newly established requirements.[9] In this context, we believe that some key issues for the Regulators to consider will be a) whether the creation of a local Trade Repository ("***TR***") is needed, b) how the Regulators can enable market participants to make use of efficient, established ways of complying with any

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[6] An analysis of transactions that are electronically confirmed through MarkitSERV shows not only significant differences between asset classes in the percentage of electronically eligible volume but also in the timeliness of their confirmation. See Markit Metrics Trend Report, available at http://www.markit.com/en/products/research-and-reports/metrics/metrics.page for details.

[7] Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 Fed. Reg. 81519 (proposed Dec. 28, 2010).

[8] MarkitSERV, for example, has established and maintains today connectivity with 8 central clearinghouses, more than 70 trading venues (including interdealer brokers), and more than 2,300 counterparties.

[9] See PIDM Consultation Paper BNM/RH/CP 018-05: Recordkeeping and Reporting Requirements for the Over-the-Counter Derivatives. 26 March 2012. "BNM and PIDM are also in discussions with the SCM in respect of the recordkeeping and reporting template with a view to minimise costs to the industry in the development of the reporting infrastructure."

requirement to report derivatives transactions to a TR, and c) how to avoid situations where a single transaction has to be reported several times under different regimes.

a) Local vs global TR

The CP states that not only the Securities Commission Malaysia has the power to set up a TR[10] but also that the Regulators "envisage" setting one up.[11]

We believe that, in this context, the Regulators should note that transparency in financial markets is most useful if it is available in a consolidated fashion. Any data fragmentation or duplicative reporting will reduce the benefit of transparency in the OTC derivatives market, so the Regulators must avoid fragmentation and duplication wherever possible. We are concerned that the creation of various national TRs for OTC derivatives would not only result in duplicative reporting of transactions but might also create information that is not sufficiently harmonized to be aggregated. We believe that the most cost-effective and efficient approach to capturing and storing information about OTC derivatives transactions, and providing he relevant data to regulatory authorities around the globe, would be the establishment of a global TR that feeds the relevant data to local regulators or, where necessary, into other TRs. Such approach is not only preferable because of cost and efficiency considerations, but it will also help avoiding the dangers of double reporting and data fragmentation.[12]

While we believe that the creation of local TRs should be avoided where possible, we acknowledge that some jurisdictions might see sufficient reason to establish their own local TRs. Where that is the case, it will be essential that the relevant regulatory authorities ensure the accuracy of the data that is held in any domestic TRs and its consistency with data held in foreign TRs. We believe this can best be achieved if international providers of Independent Verification Services ("***IVS***")[13] are tasked with reporting of transaction data, particularly when the reporting of a single transaction might be required in multiple jurisdictions.[14] Further, we believe that the introduction of a local reporting requirement should not create unnecessary burden on the local counterparties. We therefore welcome the approach taken by regulatory authorities in some countries[15] for cross-border transactions where the reporting of the transaction by the foreign counterparty to a recognized TR would be accepted.[16] We encourage the Regulators to also consider such approach for Malaysia.

b) Enabling efficient ways of reporting

We believe that the Regulators should take into account the market practices that have been established in the global OTC derivatives markets over the years. Any newly designed regulation for these markets should be designed as such that, where appropriate, such practices can be used to satisfy the newly created regulatory requirements.

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[10] *See* PIDM and Bank Negara Malaysia Concept Paper Section 1.4.

[11] See 1.5: "While the setting up of the trade repository is envisaged to provide comprehensive capture of OTC derivatives information, Bank Negara Malaysia ("BNM") and PIDM plans to implement the recordkeeping and reporting requirements on its regulated institutions in the interim."

[12] The ability to consolidate global derivatives data will be complicated by the existence of a multitude of national regulatory requirements as these might result in double reporting and data fragmentation. Double reporting will happen if more than one jurisdiction requires the reporting for a cross-border transaction to different TRs. Data fragmentation occurs if transactions are stored and/or disseminated by various entities, and cannot be easily consolidated. Both double reporting and data fragmentation can endanger the reliability of the transparency that is provided to regulators and the public.

[13] IVS can be defined as "entities that act independently from and on behalf of the counterparties to the transaction to facilitate the agreement of a verified record of the complete transaction details that is used for subsequent processing."

[14] Because many derivatives transactions are cross-border, the processing of such transactions is often facilitated by IVSs who operate internationally. The use of these entities for reporting, as well, could provide several benefits to international regulatory authorities and to market participants. For these reasons we believe it is important for counterparties to be able to delegate their various regulatory obligations to internationally-operating third party service providers. These entities tend to operate across jurisdictions, so it will often be easier and more efficient to task them with ensuring the compliance of participants across various national requirements than for counterparties to handle such responsibilities themselves.

[15] Monetary Authority of Singapore Consultation Paper P003-2012: Proposed Regulation of OTC Derivatives. February 2012.

[16] *See* Monetary Authority of Singapore Consultation Paper P003-2010 Section 4.7.

Firstly, it will often be most efficient if the reporting to a TR is not performed by the counterparties to the transaction themselves, but by third parties who are specialized on this task. Allowing counterparties to use third-parties for the reporting to TRs can therefore enable a cost-effective and timely implementation of the reporting requirements proposed by the Regulators. The Regulators should hence explicitly allow counterparties to chose how to best satisfy their reporting obligations, including by the use of third parties.

Secondly, it is established practice in international derivatives markets that counterparties confirm their transactions before the verified record of the transaction is reported to the TR, either by just one of the counterparties or by a third party. Such approach will ensure the accuracy of the data that is reported to the TR, while it avoids the need for the TR to reconcile several records that it might otherwise receive for a single transaction. We believe that the Regulators should therefore not only permit, but encourage, the reporting by only *one* party of transaction records that have been *verified by both counterparties*. Ultimately, such approach can ensure data accuracy and significantly reduce the burden to counterparties. It further reflects current market practice and is consistent with regulation proposed in other jurisdictions.[17]

c) Avoid duplicative reporting requirements

As part of the Regulatory Reform for OTC derivatives markets, TRs will be set up across asset classes and regions to be the providers of definite records for OTC derivatives transactions to regulatory authorities around the globe. This is regardless of whether these regulators want to perform systemic risk analysis or market surveillance. We therefore believe that any duplicative requirements in a jurisdiction where the same transactions would be reported several times under different regulatory regimes should not be introduced or be removed. This might apply, for example, to so-called transaction reporting regimes to market regulators, or to the regular reporting of transactions to prudential regulators by individual institutions. We believe that it will be in the interest of all stakeholders if TRs were used as the source of all reporting to the various recipients as they can ensure that it will occur in the most efficient and timely fashion.

2.2. Differentiation between asset classes and phase-in

Question B: Are there any specific types of OTC derivatives trades that the template may not be suitable for?

The Regulators proposed that the relevant regulatory requirements would apply to transactions in OTC derivatives across all asset classes.[18] However, they also requested comments on whether any specific types of OTC derivatives might require a specific treatment.

Based on our experience in assisting market participants with their preparation for compliance with requirements to report their derivatives transactions to TRs in various jurisdictions, we know that the introduction of such requirements often creates a significant burden.[19] We therefore believe that the Regulators should consider a phased-in implementation of any reporting mandate. Such approach, by providing more time to adjust to the new requirements, would not only reduce the burden on market participants but would also enable a timely and cost-efficient implementation.

We welcome the Regulators' acknowledgment that certain types of OTC derivatives may necessitate different regulations. Specifically, we believe that any requirement to report transactions to a TR should be phased-in by asset class in order to reflect their varying degrees of standardization and electronification.

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[17] *See* Swap Data Recordkeeping and Reporting Requirements 77 Fed. Reg. 2136 (published March 13, 2012)

[18] See 3.3 For the purpose of this requirement, OTC derivatives refer to financial agreements that are traded outside of an organised exchange and whose obligations are derived from, referenced to, or based on one or more underlying reference items that are interest rates, currencies, commodities, securities or other ownership interests, credit or guarantee obligations, debt securities, indices related to those items, or such other reference items or indices as may be prescribed by BNM or PIDM from time to time.

[19] This is particularly true as such reporting requirements are being introduced in numerous jurisdictions at almost the same time.

Our experience in facilitating confirmation of derivatives transactions across asset classes and regions has demonstrated that, for a variety of reasons, the level of standardization and electronification differs significantly between asset classes. We therefore support the approach that has been taken in some jurisdictions where, for example, compliance for foreign exchange, equity and commodity derivatives will be required only several months after compliance for interest rate and credit derivatives.[20] We believe that, in addition, the Regulators should consider providing a phase-in by participant category. Such approach will reflect the varying level of preparedness, depending on whether the counterparties are active dealers, banks that are occasional users of the product, or commercial entities that use derivatives only occasionally to hedge. Finally, providing a phase-in of the timing deadlines over time will allow all market participants to adjust to the newly introduced requirements.[21] It would also allow the Regulators to observe the effect of any newly introduced reporting requirement on market functioning before imposing any more demanding requirements. The Regulators should note that multi-pronged phase-in approaches will be used in other jurisdictions.[22] We believe that their use could also be appropriate in Malaysia.

2.3. Data Fields to be reported

Question A: Do you envisage any problem or concern to report data fields in the format as prescribed in the template? If yes, please highlight how these concerns may be addressed.

Determining which of the many data fields that constitute the details of an OTC derivatives transaction have to be reported to a TR and how these data fields should be reported is a complex and challenging task. We note that a number of regulatory authorities have spent significant amounts of time aiming to capture all the intricacies of the almost infinite variety of products that trade in the OTC derivatives market. These efforts often resulted in the creation of numerous and complicated lists of data fields that differentiate both between asset class and product categories. We appreciate the Regulators' goal of streamlining this process. We recommend that, to enable a timely and cost-efficient implementation of the reporting requirement, they should follow a two-pronged approach in defining what data sets have to be reported to the TR:

1. A basic data set that contains key economic terms in normalized data fields should be reported to a TR for every derivative transaction that is covered by the regime. Such data set could be applicable across asset classes and products, and the number of additional fields that are asset class specific would be very limited.[23]

2. All relevant elements of the transaction somehow need to be captured in TRs so they can be made available to regulatory authorities if needed. We believe that the Regulators should therefore require counterparties to also report the full set of transaction confirmation data (either in normalized data fields or as a copy/electronic image of the paper confirmation, where appropriate) to the TR for each OTC derivatives transaction.

We believe that the combination of reporting a limited set of key economic data (as normalized data fields) in addition to the full confirmation (in the appropriate format) will be an efficient way of achieving the regulatory objectives of data reporting to TRs. Such approach would also be consistent with requirements

[20] For example, the CFTC will require first reporting in the asset classes of credit and interest rates first, reflecting their higher degree of standardization and automation, to be followed by equity, FX, and commodities only several months later. See Real Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012) and Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

[21] Such phase-in would initially allow a certain time period post-execution of a transaction for reporting that would be reduced at a later point in time.

[22] In the United States, the CFTC's final real-time and swap data reporting rules phase-in compliance with the reporting requirements by category of market participant, by asset class, and over time. See Real Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012) and Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

[23] We recommend that the Regulators take the views of existing TRs into account when making any determination about the appropriate data fields.

that have been established in other jurisdictions.[24] With respect to collateral data fields, where applicable, trade level independent amounts should be required; however, it is important to note that variation details are not traditionally provided on a transaction by transaction basis. We further recommend that international regulators coordinate their efforts to agree on a set of minimum key economic terms that need to be reported in verified format. Such harmonization would significantly aid parties in their attempts to satisfy the reporting requirements that are established by regulators globally.

2.4. Portfolio Reconciliation[25]

Question G: What is your institution's practice in respect of reconciliation of outstanding OTC derivatives trades with respective counterparties? Specifically, how many percent of your outstanding OTC derivatives trades (by number of trades and mark-to-market value of trades) are reconciled at daily, weekly, monthly, quarterly and annual intervals or not reconciled regularly?

MarkitSERV is one of several independent third party providers that offer portfolio reconciliation services for OTC derivatives across asset classes and regions ("***MarkitSERV PortRec***" or "***PortRec***"). PortRec and other reconciliation services are widely used by investment managers, hedge funds, and fund administrators to automate the pairing of counterparty records and to identify economic or valuation differences for OTC derivative trades and portfolios. Reconciliation hereby consists of (1) the exchange and normalization of position details; (2) the pairing (or reconciling) of the counterparties' records; (3) the identification of discrepancies; and (4) the communication and resolution of those discrepancies. It thus allows market participants to identify any issues related to their counterparty exposure at an early stage and minimizes the effort required to correct any such discrepancies in the future.

Even though trading and confirmation processes are becoming increasingly automated, standardized, and electronified, discrepancies between the counterparties in material terms and valuations continue to occur. This is, for example, because confirmations may still be in the progress of negotiation, disputed, or may have been booked incorrectly, leading to inaccurate or contested data on one party's systems; alleged trades may not be recognized by one party; a counterparty may have confirmed a transaction manually without matching its internal trade records to that of the confirmation system; or differences may occur in the inputs that are used to calculate the valuation. We therefore agree with the Regulators that reconciliation of OTC derivatives transactions remains an important function and we believe that this does not only apply to uncleared transactions but also to those that are centrally cleared. We expect that portfolio reconciliation will continue to be an important tool to reduce systemic risk and we recommend that the Regulators establish an appropriately designed regime for the periodic reconciliation of OTC derivatives portfolios. They should hereby take the following considerations into account.

Many major dealers have recently committed to reconciling terms and valuations for portfolios of OTC derivatives,[26] and a number of other counterparties engage in portfolio reconciliation on a voluntary basis. However, the benefits of reconciliation are currently limited for several reasons:

- The current practice of portfolio reconciliation is neither standardized nor very efficient. For example, reconciliation mechanisms are often either proprietary solutions, and thus based on unique specifications, or merely involve the exchange of spreadsheets, and thus are prone to errors.

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[24] Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

[25] See 6.2: "Upon request by either BNM or PIDM, institutions shall furnish Sections 1 to 4 of the recordkeeping and reporting template within 24 hours of the institution's closing of processing, with reconciled information on all outstanding OTC derivatives positions as at the close of processing on that business day. For example, if a request is made to Institution X at 3:00 p.m. on Day #1 and the closing of processing of Institution X is at 10:00 p.m. of Day #1, Institution X is required to submit the reconciled information on all outstanding OTC derivatives as at 10:00 p.m. on Day #1 to BNM or PIDM or both by 10:00 p.m. on Day #2."

[26] For example, the industry has recently committed to the Federal Reserve Bank of New York to improve reconciliation in several ways such as creating standardized methods for reconciliation and reducing thresholds for routine reconciliation. *See* the letter with certain commitments from the 14 buy-side and sell-side derivatives institutions addressed to the President of the Federal Reserve Bank of New York at 5, 17, 18, 28 (March 31, 2011), available at http://www.newyorkfed.org/newsevents/news/markets/2011/SCL0331.pdf

- Although some standards have been proposed, no regulatory or industry standards exist that specify the data fields that should be exchanged between the counterparties.[27] As a result, even basic data like product names or reference entities will often vary between the parties' records, while useful data such as that pertaining to independent amount[28] is not consistently provided.

- Portfolio reconciliation is often only an irregular, reactive process. This is because many counterparties to derivatives transactions will only reconcile their portfolios once a collateral dispute has arisen.

We believe that these shortcomings could be addressed if the Regulators established an appropriately calibrated, standardized, and comprehensive regime for the use of portfolio reconciliation in the Malaysian OTC derivatives market. In this context, however, they should avoid establishing any requirements that are unduly burdensome. This, we believe, can be achieved by relying on the following guidelines:

- The requirements to reconcile a bilateral portfolio should be based on thresholds in relation to the size of the bilateral portfolio while resolution should only be required for discrepancies that are material
- Counterparties should only be required to reconcile key economic terms
- Counterparties should be permitted to use qualified third parties for reconciliation purposes
- For transactions that are centrally cleared, counterparties should only be required to adopt appropriate policies and procedures to perform their reconciliation
- Achieving reconciliation by the end of the day may not be achievable across all transactions and data elements. We therefore encourage the Regulators to further develop their proposal regarding the expected time frame for reconciliation, depending on the data elements it would refer to.[29]
- Time frames for dispute resolution should be granular and reflect factors proposed by ISDA[30]

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MarkitSERV appreciates the opportunity to comment on PIDM's and Bank Negara Malaysia's Concept Paper on Recordkeeping and Reporting Requirement for Over-the-Counter Derivatives. We would be happy to elaborate or further discuss any of the points addressed above. In the event you may have any questions, please do not hesitate to contact the undersigned or Stuart Billingham at stuart.billingham@markitserv.com.

Yours sincerely,

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[27] ISDA has recently drafted a loose set of guidelines for data to be reconciled, but these do not list specific data fields and, in any event, this is still in draft form. *See* ISDA, 2011 Convention on Portfolio Reconciliation and the Investigation of Disputed Margin Calls (Discussion Draft April 7, 2011), *available at* http://www2.isda.org/attachment/MjkzNw==/ICM- .

[28] Independent amounts can be applied on a transaction basis to provide for additional collateral outside exposure collateral. In a joint letter from ISDA and SIFMA, the organizations proposed the following definition: "Independent Amount" means money, securities or property posted by a party to secure its obligations pursuant to the terms of the swap agreement and that is either (i) specified as an "Independent Amount" in the relevant agreement of the parties or (ii) calculated based upon terms agreed between the parties (in either case, in addition to and separately from any Exposure Collateral requirement). *See* Letter from ISDA and SIFMA to the Commission at 2 (Feb. 1, 2011).

[29] Typically, mark data is not supplied until the following morning. Requiring end of day reconciliation could present more of a burden to certain firms. Economics reconciliation may not be as challenging; however, this would still require a change in process of exchanging transaction or position details at end of day or reconciling to the Trade Repository.

[30] *See* ISDA, Collateral Dispute Resolution Procedure at 9 (2009), available at http://www.isda.org/c_and_a/pdf/ISDA-2009-Dispute-Resolution-Procedure.pdf

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