

August 13, 2012

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

Re: File No. S7-05-12: Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Ms. Murphy:

MarkitSERV¹ is pleased to submit this letter to the Securities and Exchange Commission (the “**SEC**” or “**the Commission**”) in response to its request for comment with respect to the *Statement of General Policy on the Sequencing of Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act* (“**Dodd-Frank**”) (the “**Policy Statement**”). We welcome the Commission’s initiative to create more certainty about the timing and sequencing of Dodd-Frank Title VII-related requirements with which market participants must comply. We also appreciate the Commission’s measured, thoughtful, and comprehensive approach to the finalization of the relevant rules and implementation.

Over the last several years, MarkitSERV has spent significant time and resources helping participants in the OTC derivatives markets around the globe to prepare for compliance with a multitude of upcoming regulatory requirements, including those related to Dodd-Frank Title VII. Based on our discussions and work with participants in the OTC derivatives markets around the globe, please find below our comments in relation to the:

- i) order of implementation;
- ii) time given to come into compliance;
- iii) harmonization of implementation between jurisdictions;
- iv) reporting of transactions in security-based swaps (“**SB swaps**”) to security-based swap data repositories (“**SB-SDRs**”); and
- v) challenges in implementing the Commission’s requirements regarding business conduct standards.

In general, we believe that the Commission should consider the needs and views of all market participants when creating an implementation schedule, not just those of registered entities. We also urge the Commission to harmonize its rules and implementation schedule with other regulators where it is possible and practicable in order to minimize market disruptions as much as possible. Finally, and also to minimize unnecessary burdens on market participants, we urge the Commission to provide flexibility in its business conduct standards rules because these have proven particularly burdensome in other contexts.

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.

Introduction – Role of MarkitSERV in the Derivatives Market

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. While such services are offered by various other providers, ours are widely used and recognized by market participants as tools to increase efficiency, reduce cost, and secure legal certainty. With more than 2,500 firms globally using the MarkitSERV platforms, including advisers to over 25,000 buy-side fund entities, our compliance, operational, and technological infrastructure plays an important role in supporting the OTC derivatives markets globally, including in the United States, Europe and Asia. By integrating electronic trade confirmation, allocation, routing and portfolio reconciliation, MarkitSERV provides a single gateway for the processing of OTC derivatives transactions.

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 G-20 commitments.² Over the last 18 months, for example, we have submitted over 20 comment letters to regulatory authorities around the world, participated in numerous roundtables and regularly provided relevant authorities with our insights on current market practice. We have also engaged in numerous industry discussions regarding the appropriate approaches to enable timely and cost-effective implementation of the various upcoming regulatory requirements (for example, through the use of multi-layered phase-in of new infrastructure or by providing participants with a choice of means for satisfying such requirements).

Comments on the Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps

i) Order of implementation

We support the Commission's general approach to implementing the various Dodd-Frank Title VII-related requirements. Specifically, in order to enable a smooth and timely implementation in the marketplace, we believe that it will be important for the fundamental rules, such as the Definitional Rules and Cross-Border Rules (as defined in the Policy Statement), to be the first priority of the Commission. As we have stated in a comment letter to the Commodity Futures Trading Commission ("**CFTC**"),³ we also support the phasing-in of rules requiring the reporting of transactions in SB swaps to SB-SDRs before other requirements, such as clearing and trading, because this will provide the Commission with additional data on which to base any necessary determinations.

ii) Time given to come into compliance

We agree with the Commission that market participants will need adequate time to come into compliance in order to avoid market disruption or other undesired effects.⁴ Specifically, we believe that the actual compliance period should take into consideration that entities affected (directly or indirectly) by these requirements:

- need time to properly analyze and fully understand the requirements before they can identify and develop the infrastructure that they will need to support compliance;

² "Leaders' Statement: The Pittsburgh Summit" (Sept. 24-25, 2009), available at <http://www.g20.utoronto.ca/2009/2009communiqué0925.html>.

³ See MarkitSERV comment letter to the CFTC's Swap Transaction Compliance and Implementation Schedule (November 4, 2011). <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=49962&SearchText=>.

⁴ See Policy Statement, Section I (B) Overview of Statement, 77 Fed. Reg. 35625 (June 14, 2012).

- will need to implement numerous changes to their current systems, policies, procedures, and personnel in order to prepare for and realize full compliance, and this will require major investments and significant adjustments that take time and resources to implement; and
- will need time to test the newly established infrastructure and procedures to ensure that they operate as intended.

MarkitSERV has a significant amount of experience in implementing new operational processes. For example, since early 2011, we have been in the process of specifying, building and testing the automated systems that will help our customers comply with the CFTC's requirements for Real-Time Reporting⁵ and Swap Data Repository Reporting.⁶ We have conducted this process in close dialogue with market participants to ensure that these systems will be operational on the expected compliance dates. Through this process, we have become intimately familiar with the challenges facing market participants in preparing for full implementation and compliance.

Based on this experience, we suggest that the Commission consider the following when making determinations about the time it will provide for parties to come into compliance:

- The Commission should collect and carefully analyze feedback not only from those parties to whom the requirements directly apply (e.g., security-based swap dealers ("**SB SDs**") and major security-based swap participants ("**SB MSPs**")), but also from a range of other entities that are affected or might be instrumental in enabling market participants to come into compliance. For example, we expect that a significant number of entities that will register as SB SDs and/or SDs will use third party providers, such as MarkitSERV, to facilitate their compliance with various reporting requirements. Thus, the Commission should consider the views of market infrastructure providers in addition to registered entities with regard to how implementation and capacity issues could affect the compliance timeframe.
- We believe that the Commission should, as soon as practicable and in consultation with market participants, establish and publish *specific dates* for compliance with the various requirements identified in the Policy Statement so that entities subject to Title VII can effectively allocate and budget their time and resources to prepare for compliance. Only by providing this additional level of certainty will market participants be able to adequately plan ahead. In this context, we encourage the Commission to consider also the day of the week on which initial compliance dates would fall. Specifically, we believe that the Commission can facilitate a smoother and less risky transition if compliance dates generally fall on a Monday. Doing so would allow market participants (and their third party service providers) to make use of the immediately preceding weekend to perform preparatory work, giving them more time to load the required static data, configure the production systems, and perform the necessary testing, without the concurrent pressures of the regular business day.⁷
- Many market participants have already undertaken significant infrastructure build in preparation for compliance with upcoming CFTC requirements that are similar in nature to many of the Commission's proposed rules. Therefore, some market participants may only be required to make incremental system adjustments for compliance with certain rules. However, not all SB SDs will be swap dealers and not all market participants will be registered with the Commission or the CFTC. Accordingly, adequate time should be provided for these market participants as well.
- In addition to differences in infrastructure build and preparatory work among market participants, significant differences exist between the various asset classes in relation to their size, their current level

⁵ Real-Time Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012).

⁶ Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

⁷ This is preferable to trying to perform these challenging and time-consuming tasks on a weekday evening, during which time such systems are likely required to be available for production use in other time zones.

of product standardization, the number of product variations, the number and nature of the counterparties and the amount of central clearing that occurs already today. In response to certain questions from the Commission,⁸ we therefore believe that the Commission should consider a phase-in period for each major requirement that would be based on asset class and/or category of participant. For example, because of the greater product standardization and clearing in credit products, it makes sense to require compliance in these classes ahead of equity products. And, of course, this same principle should be applied to specific asset classes or sub-classes within each product area.⁹

iii) Harmonization of implementation between jurisdictions

Many OTC derivatives transactions are entered into on a cross-border basis and will likely be subject to regulatory requirements from multiple jurisdictions. Therefore, any differences in the requirements implemented pursuant to the Pittsburgh G20 commitments will increase costs and operational complexity for all market participants. We therefore encourage the Commission to harmonize its rules, to the greatest extent possible, with the requirements that are imposed by other regulatory authorities, both in the United States and internationally.¹⁰ In this regard, we urge the Commission to issue a proposal on extraterritoriality as soon as possible so that market participants can comment on that rule while the corresponding rules are being considered by other regulators.

iv) Reporting of SB swaps to SB SDRs

We support the Commission's determination to require the reporting of SB swaps to SB SDRs early in the implementation process but only after the Commission finalizes the Definitional Rules and proposes the Cross-Border Rules. We believe this will provide the Commission with access to data that is essential to making informed decisions in relation to the other Title VII requirements, such as clearing and trading.

v) Challenges in implementing the business conduct standards requirements

MarkitSERV has been working closely with market participants and industry associations to develop tools that facilitate compliance with various CFTC business conduct standards.¹¹ Due to the wide variety of market participants and transaction circumstances, we have found that market participants need flexibility in order to comply with these requirements. The CFTC recognized this, for instance, by providing its staff with the authority to create "alternative compliance schedules" for market participants if the participant demonstrates

⁸ For example, the Commission asked: "Should the Commission consider further phasing in such submissions and determination by type of SB-swap? If so, what further phasing should occur?"; "Should the Commission phase-in mandatory clearing by type of market participant?"; "Should the Commission phase-in compliance with the mandatory trade execution requirement by type of market participant?"

⁹ For example, a customized product such as a basket transaction done for an end-user client may require additional time due to its complex structure.

¹⁰ This statement is in response to the following requests for comment in the Policy Statement: "In determining when SB swap transaction data should be disseminated to the public, should the Commission take into account other authorities', including the CFTC's, timing for a parallel or similar requirement? Why or why not?"; "In determining when SB-SDs and MSBPs should be required to register with the Commission, should the Commission take into account the CFTC's timing for its parallel requirement and/or the timing of other jurisdictions?"; "In determining when SB-SDs should be subject to the final rules to be adopted under sections 3E and 15F of the Exchange Act, should the Commission take into account the CFTC's timing for its parallel requirement and/or the timing of other jurisdictions?"; "In determining when to require SB-SEFs to register with the Commission, should the Commission take into account with the CFTC's timing for its parallel requirements and/or the timing of other jurisdictions?"; "In determining when to require compliance with the mandatory trade execution requirement, should the Commission take into account the CFTC's timing for its parallel requirements and/or the timing of other jurisdictions?"

¹¹ For example, the International Swaps and Derivatives Association, Inc. (ISDA) partnered with Markit to develop a technology-based solution that enables counterparties to amend their OTC derivative documentation for the purpose of facilitating compliance with Dodd-Frank regulatory requirements.

that certain requirements are “technologically and economically impracticable.”¹² Similarly, the CFTC’s recently published Exemptive Order proposes a phased compliance program which would afford SDs and MSPs additional time to prepare for the application of entity-level requirements and allow non-US SDs, non-US MSPs, and the foreign branches of US SDs and MSPs to comply with only the regulations that may be required in their home jurisdictions for certain requirements.¹³ We urge the Commission to adopt approaches to its business conduct standards that provide similar flexibility.

Further, we note that even imposing rules regarding business conduct standards that merely codify apparent best practices might create significant challenges for certain market participants. Many best practices are performed for some transactions and/or some counterparties at agreed intervals, but applying such practices to *all* transactions and *all* counterparties at a *prescribed frequency* could have significant and unintended consequences. For example, requiring daily marks to be provided (as proposed in the Commission’s rule regarding business conduct standards)¹⁴ even 10% more frequently would create substantial costs because it would likely affect counterparties that last traded many years ago. We therefore suggest that the Commission carefully consider feedback from market participants and third party service providers in relation to their ability to comply with the various business conduct standards requirements, and use this as the basis for shaping both the rules and the timing of compliance with these requirements.

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MarkitSERV appreciates the opportunity to comment on the Commission’s Statement of General Policy on the Sequencing of Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act. We would be happy to elaborate or further discuss any of the points addressed above. In the event you have any questions, please do not hesitate to contact the undersigned or Henry Hunter at henry.hunter@markitserv.com.

Yours sincerely



Jeff Gooch
Chief Executive Officer
MarkitSERV

cc: David Stawick, Secretary, Commodity Futures Trading Commission
Peter Malyshev, Latham & Watkins LLP

¹² CFTC staff can make such a determination in connection with the requirement to record and store daily trading records. See Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants. 77 Fed. Reg. 20128 (April 3, 2012).

¹³ Exemptive Order Regarding Compliance with Certain Swap Regulations. 77 Fed. Reg. 41110 (July 12, 2012).

¹⁴ See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, 76 Fed. Reg. 42396, 42454 (to be codified at 17 C.F.R. § 240.15Fh-3(c)) (July 18, 2011).