

August 27, 2012

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

Re: **RIN 3038-AD57: Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act**

Dear Mr. Stawick:

MarkitSERV¹ is pleased to submit the following comments to the Commodity Futures Trading Commission (“**CFTC**” or the “**Commission**”) in response to its proposed interpretive guidance regarding the “Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act” (the “**Proposed Guidance**”) which details the Commission’s proposal regarding the extraterritorial application of certain CFTC rules promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“**Dodd-Frank**”).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 2,500 firms globally using the MarkitSERV platforms, including agents for over 25,000 buy-side fund entities, our legal, operational, and technological infrastructure plays an important role in supporting the OTC derivatives markets in the United States, Europe, Asia, and elsewhere.

By integrating electronic trade confirmation, allocation, routing and portfolio reconciliation, MarkitSERV provides a single gateway for the processing of OTC derivatives transactions. Based on our experience as a 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 G20 commitments.³ Over the last 18 months we have submitted over 20 comment letters to regulatory authorities around the world, participated in numerous roundtables and regularly provided financial regulators with our insights on current market practices with regard to, for example, the electronic confirmation of OTC derivatives transactions, efficient ways of reporting them to Trade Repositories, and the reconciliation of existing portfolios of such transactions, among other things. We have also made suggestions to regulatory authorities on the appropriate approaches to enable timely and cost-effective implementation of newly established requirements, for example through the use of multi-layered product and participant phase-in or by providing a choice of means to satisfy regulatory requirements.

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

³ “Leaders’ Statement: The Pittsburgh Summit” (Sept. 24-25, 2009), available at http://www.g20.org/pub_communiques.aspx.

We welcome the publication of the Commission's Proposed Guidance and appreciate the opportunity to provide the Commission with our comments. We understand that this is a complicated issue and recognize the Commission's work in balancing applicable jurisdictional restraints, concerns about evasion, and principles of international comity. However, based on our extensive discussions and work with numerous derivatives market participants around the globe, we believe that the suggestions discussed below would help to ensure that the Commission's Title VII requirements are implemented in an orderly and trouble-free manner. Specifically, we believe that the Commission would better facilitate compliance if it designs its final Cross Border Application guidance such that: (i) market participants and their third party service providers have sufficient time to analyze and implement cross-border related guidance before compliance is expected; and (ii) compliance dates officially commence at the start of the week.

Comments

i) **Market participants should be provided with sufficient time to analyze final requirements and to prepare for compliance**

Over the last 18 months, MarkitSERV has spent a considerable amount of time and significant resources specifying, building and testing automated systems that will help its customers comply with the Commission's Real-Time Public Reporting rules⁴ and Swap Data Reporting rules⁵ (together the "**Reporting Requirements**"). Our efforts have been conducted in close dialogue with our clients, including potential Swap Dealers ("**SDs**"), Major Swap Participants ("**MSPs**"), and non-SDs/MSPs, and in this process we have noticed that many market participants find it challenging to implement the Reporting Requirements, especially in light of the added complexity created by the Proposed Guidance. Specifically, the Proposed Guidance introduces new decision points to determine whether a transaction has to be reported and by whom it should be reported based on the status of the counterparties, their elections with respect to (for example) substituted compliance, and the relationship between them.

We believe that many market participants will look to third party providers in order to simplify the process of complying with the Reporting Requirements. If a large number of market participants do so, it would centralize and automate the logic that is required to determine relevant key characteristics for any given swap transaction under the Reporting Requirements and Proposed Guidance, such as its reportability and determination of the reporting party. We expect that this would reduce overall costs and increase the efficiency of reporting for the participants. It would also likely improve the quality of data that is received and stored by Swap Data Repositories ("**SDRs**") because it would reduce the likelihood of duplicative reporting (when a transaction is inadvertently reported by both sides) or of under-reporting (when the transaction is inadvertently reported by neither side).

Given that the compliance dates for the Reporting Requirements are expected to become effective in the very near future, we have started updating our systems based on our understanding of the Proposed Guidance. We are also in the process of gathering relevant information from clients, for example about their expected registration status or whether they believe they will be considered a "U.S. Person" under the Proposed Guidance. We are concerned, however, that there will not be enough time between the publication of the final guidance and the compliance dates for the Reporting Requirements to allow us to make additional necessary changes to the reporting logic, and to gather or correct configuration data from clients. This is of particular concern given the complexity of the Proposed Guidance, the possibility that it will be modified before it is

⁴ Real Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012).

⁵ Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

issued in final form, and the likelihood that it will not be issued until very close to the actual compliance dates for the Reporting Requirements, or even after the compliance dates.

Furthermore, we understand that some market participants have concluded that they cannot make any final decisions about their registration status and elections with respect to, for example, substituted compliance before publication of the final guidance. As a result, many market participants may not have the requisite information or answers needed to configure either their own or third party systems in time to meet the compliance dates.

We therefore encourage the Commission to consider providing market participants and their third party service providers with a sufficient period of time between the publication of the final guidance and the first compliance date for the Reporting Requirements. Whether or not the final interpretive guidance deviates from the Proposed Guidance (and therefore requires adjustments to the reporting logic), market participants will likely need, and should be provided with, additional time to prepare for coming into compliance with the Reporting Requirements.⁶

ii) Compliance dates should be set to fall on the start of the week

Based upon our many years' experience with successfully implementing new operational processes, we believe that it is important for the Commission to carefully consider the day of the week on which initial compliance dates for the Reporting Requirements fall.

Specifically, we believe that scheduling compliance dates to generally fall on Mondays would facilitate a less risky transition into the new rules. This would allow market participants and their third party service providers to make use of the immediately preceding weekend for the necessary preparatory work, giving more time to load the required static data and configure the production systems for reporting. We believe this is preferable to trying to perform these challenging and time-consuming tasks on a weekday, during which time such systems are likely required to be available for production use in other time zones.

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MarkitSERV appreciates the opportunity to comment on the CFTC's Proposed Guidance on the "Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act." 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 Henry Hunter at henry.hunter@markitserv.com.

Yours sincerely,



Jeff Gooch
Chief Executive Officer
MarkitSERV

⁶ The provision of some additional time before the start of compliance with the Reporting Requirements would also be useful to allow a larger number of counterparties to register and receive their SD/MSP registration status as well as to register and receive any necessary identifiers (such as the CFTC Interim Compliant Identifier(s) ("**CICI**") and Unique Swap Identifier ("**USI**") namespace) and accordingly map such information to the requisite systems. Relative to the CICI, the Commission should note that, while it originally provided a 90 day grace period to October 15, 2012 for this purpose, this period has now been effectively reduced to a mere 3 days for the credit and interest rate products due to the changes in some expected compliance dates. We believe it would be challenging for many market participants to meet such stringent timeframes for compliance and implementation.