

31 August 2012

Macroeconomic Surveillance Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Submitted via: derivatives@mas.gov.sg

Re: Consultation Paper II on Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives

Dear Sir/Madam:

MarkitSERV¹ is pleased to submit the following comments to the Monetary Authority of Singapore (“**MAS**”) in response to its Consultation Paper regarding the “Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives” (the “**Consultation Paper**” or “**CP**”).

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 Asia, Europe, the United States and elsewhere. In Singapore, we have a substantial local presence with currently more than 40 employees, and we have supported a large and rising number of local market participants with our confirmation services for many years. More recently, we have actively worked with the Singapore Exchange (SGX) and the relevant stakeholders in preparing for the introduction of central clearing of OTC derivatives in Singapore. Specifically, we dedicated substantial

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

resources to establishing the necessary connectivity that enabled the clearing of interest rate derivatives from November 2010, and for NDFs from October 2011.

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 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.² Over the last 18 months we have submitted over 20 comment letters to regulatory authorities around the world, participated in numerous roundtables and 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 made suggestions to regulatory authorities on appropriate approaches to enabling timely and cost-effective implementation of newly established requirements, for example through the use of multi-layered phase-in or by providing with a choice of means to satisfy regulatory requirements.

Comments

We welcome the publication of the Consultation Paper on draft legislative amendments to the Securities and Futures Act (“*SFA*”) and we appreciate the opportunity to provide MAS with our comments. Specifically our comments relate to (i) the power of MAS to obtain certain information from “any person”; (ii) flexibility in terms of how to satisfy the reporting obligations; and (iii) the reporting of transactions that are centrally cleared.

1. Power of Authority to obtain information

The proposed legislative amendments³ state that MAS could require “any person to furnish the Authority with such information or document as may be required by the Authority”. This would apply both to data required by MAS to make appropriate clearing determinations and reporting obligations.⁴ Further, the proposed amendments include a provision that “no person shall [...] be obliged to disclose any particulars as to which he is under an obligation under any written law to observe secrecy”.

As we have stated previously, MarkitSERV has been working constructively with international regulators to assist them in the drafting of legislation and technical standards, as well as the implementation of regulatory reform. We have provided not only comment and analysis but also data wherever possible to inform the debate, and we are planning to continue to do so in the future. However, in relation to the above draft legislative amendments, MAS should note that the various parties that it might want to require relevant data from may have *contractual* agreements in place with their clients that would not allow them to share this data with MAS. Specifically, MarkitSERV’s ability to provide other parties, including regulatory authorities, with actual, granular data of the derivatives transactions that have been confirmed on our platforms is restricted by our user agreements. Therefore, as a general matter, we can provide any such data only on an aggregated and anonymized basis unless our clients have provided us with an exemption to provide their transaction data to regulatory authorities on a granular basis.

2. Flexibility in relation to the Reporting Obligation

² “Leaders’ Statement: The Pittsburgh Summit” (Sept. 24-25, 2009), available at http://www.g20.org/pub_communiques.aspx.

³ Annex I and Annex II of the Consultation Paper II on Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives respectively.

⁴ New Part IIID of the Securities and Futures Act: Reporting Obligations.

The CP states that where the person that has an obligation to report a derivatives transaction to a TR reports the information to “another person”, where the other person has reported the information to a TR and the information is a) true and correct and b) has been received by the TR the first person shall be deemed to have reported at the time or times when the information reported has been received by the relevant TR.⁵ Further, where one or more parties have an obligation to report and where one of the parties has reported the information to a TR and the information reported is a) true and correct and b) has been received by the TR, every other party shall be deemed to have reported at the time or times when the information reported has been received by the relevant TR.⁶

As we explained previously⁷ we welcome MAS’ willingness to provide counterparties with flexibility in terms of how they report their transactions to TRs as we believe it will facilitate a cost effective and timely implementation of the reporting requirement. Specifically, we highlighted that any reporting regime should allow counterparties/parties to delegate the reporting to TRs to third parties and also allow reporting by only one party where the parties with the obligation decided that this was the most cost-effective and efficient way of satisfying their requirements. We believe that such approach is not only in line with the one that has been taken by other jurisdictions⁸ but it would also reflect current market practice. Further, we believe that reporting by one party, as long as it reports a record of the data that has been verified by both counterparties, is preferable to the reporting of the transaction by multiple parties. It is not only efficient but also often seems the best way to ensure the accuracy of the data that is reported to the TR.

We therefore welcome the above draft legislative amendments as we believe they would provide counterparties with a significant degree of flexibility in terms of reporting, whether they decide for it to be performed by only one counterparty or they delegate it to a third party.

However, it is unclear what “true and correct” means in practice, and how the relevant parties can ensure that this condition has been satisfied. In this context, we believe MAS should be aware of provisions that the CFTC has used in its final SDR rules as basis to ensure that the data that is reported to a TR is indeed reliable and accurate.⁹ Specifically, the CFTC would require SDRs to “confirm the accuracy of all swap data that is submitted.” However, an SDR is not required to affirmatively communicate with both counterparties when data is received from a SEF, DCM, DCO or third-party service provider when the SDR has formed a reasonable belief that the data is accurate, the data or accompanying information reflects that both counterparties agreed to the data and the counterparties were provided with a correction period.¹⁰ We believe that such approach might also be relevant for the regulatory regime that MAS is in the process of developing in Singapore.

3. Reporting of derivative transactions that are centrally cleared

The CP states that “notwithstanding that the rights and obligations under a reportable derivatives contract are transferred to one or more market contracts the reference to reportable derivatives contract [...] shall include all of those market contracts.”¹¹

As we have stated previously we believe that significant uncertainty can arise in relation to the reporting of transactions that are centrally cleared, given that there is often a period of time between the execution of such transaction (when a bilateral contract is created between the counterparties) and its acceptance for

⁵ New Part IIID of the Securities and Futures Act: Reporting Obligations.

⁶ New Part IIID of the Securities and Futures Act: Reporting Obligations.

⁷ See MarkitSERV comment letter to the MAS’s Consultation Paper on “Proposed Regulation of OTC Derivatives” (26 March 2012). <http://www.markit.com/assets/en/docs/other/letters-to-regulatory-bodies/2012/MServ%20response%20MAS%20Proposed%20Regulation%20of%20OTC%20Derivs.pdf>

⁸ See Swap Data Recordkeeping and Reporting Requirements 77 Fed. Reg. 2136 (published March 13, 2012)

⁹ Swap Data Repositories: Registration Standards, Duties and Core Principles. 76 Fed. Reg. 54538 (Sept. 1, 2011).

¹⁰ In contrast, if the transaction data is reported directly by a swap counterparty, the SDR must affirmatively communicate with both counterparties to the swap.

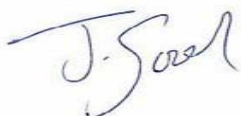
¹¹ New Part IIID of the Securities and Futures Act: Reporting Obligations.

clearing (when this transaction is replaced by two offsetting transactions with the CCP). For the avoidance of doubt, we therefore encourage MAS to clarify whether the legislative amendment does indeed require for transactions that are centrally cleared eventually (i.e. become “market contracts”) the reporting of both the original bilateral transaction and the new transactions that are created by novation to the CCP. Further, we urge MAS to carefully consider how to design the reporting obligations in this case.

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MarkitSERV appreciates the opportunity to comment on MAS’s Consultation Paper “Proposed Amendments to the Securities and Futures Act on Regulation of OTC 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 Henry Hunter at henry.hunter@markitserv.com.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Gooch".

Jeff Gooch
Chief Executive Officer
MarkitSERV