

26th March 2012

Capital Markets Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Submitted to derivatives@mas.gov.sg

RE: **Consultation Paper on Proposed 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 on the Proposed Regulation of OTC Derivatives (the “**Consultation Paper**” or “**CP**”).²

Introduction

MarkitSERV is as an independent facilitator in the global derivatives markets, making it easier for participants in these markets to interact with each other. MarkitSERV provides 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 currently using the MarkitSERV platform, including over 25,000 buy-side fund entities, its legal, operational, and technological infrastructure plays an important role in supporting the OTC derivatives markets in Asia, Europe, the United States, and globally.

MarkitSERV has a substantial local presence in Singapore with currently 27 employees, and we have supported a large and rising number of local market participants with our confirmation services for many years. We also actively worked with SGX and the relevant stakeholders in preparing for the introduction of central clearing of OTC derivatives in Singapore. Specifically, we dedicated substantial resources to establishing the necessary connectivity that enabled the clearing of interest rate derivatives from October 2010, and for NDFs from October 2011.

General Comments

MarkitSERV welcomes the flexible and pragmatic approach that MAS has taken in drafting a regulatory regime for OTC derivatives in Singapore. We believe that the proposed regime could provide an appropriate framework to achieve MAS’ regulatory objectives while allowing market participants to satisfy

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

the requirements that are imposed on them in both a cost-effective and timely manner. Please find below our specific comments in relation to a) the clearing mandate, b) the reporting mandate, c) registration as Clearing Facility, and d) the regulatory framework for Trade Repositories.

Specific comments

3. Clearing Mandate

The CP states that MAS “may request relevant information from other market infrastructure providers (such as trading platforms, *confirmation platforms*, compression providers, and trade repositories” in order to support MAS’ decision for the bottom up clearing determination.³

Over the last several years, MarkitSERV has worked 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 data, comment and analysis wherever possible to inform the debate, and we are planning to continue to do so in the future. In relation to the above proposals, however, MAS should note that our ability to provide regulatory authorities with actual, granular data of the derivatives transactions that have been confirmed on the MarkitSERV platform is restricted by our user agreements. Specifically, MAS should be aware of the fact that, as a general matter, we can provide any such data only on an aggregated and anonymized basis. We hope that this will be sufficient for MAS’ purposes in the context of the clearing determination.

3.6 Risk Mitigation for derivative contracts

We note that, in the section dedicated to potential risk mitigation requirements, the CP refers to derivative contracts “not cleared by a CCP” and specifically mentions only margin and capital requirements as potential risk mitigation measures that might be required. We believe that, when further specifying the actual risk mitigation requirements, MAS should keep the following in mind:

- Several types of OTC derivatives will not be centrally cleared in the future and will be subject to the requirements that apply to transactions that are “not cleared by a CCP”. However, even a transaction that is *designated* to be centrally cleared will initially consist of a transaction between the two counterparties (sometimes called the “alpha trade”), which is only subsequently replaced through novation to the CCP by two transactions in which the original counterparties are facing the CCP (sometimes called “beta” and “gamma” trades). While the time between the conclusion of the alpha trade and its novation to the CCP, i.e. its replacement by beta and gamma trades, will vary depending on several factors, legal risk and uncertainty exists while the transaction remains both unconfirmed and uncleared. MAS should consider this matter in relation to any future risk mitigation requirements that might apply to contracts that are “not cleared by CCPs”.⁴
- In contrast to the approach taken in other jurisdictions,⁵ the CP does not mention any requirement for counterparties to confirm their OTC derivatives transactions in a timely manner. We believe that MAS should note that the timely confirmation of derivatives transactions is not only a risk reducing measure in

³ See Consultation Paper 3.1.3.

⁴ This issue might have particular relevance in relation to a potential confirmation requirement.

⁵ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010); Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants, 75 Fed. Reg. 81519 (published 28 December 2010); Trade Acknowledgment and Verification of Security-Based Swap Transactions, 76 Fed. Reg. 3859 (published 21 January 2011); Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories, (published 20 October, 2011); Canadian Securities Administrators, “CSA Consultation Paper 91-402 – Derivatives: Trade Repositories” (23 June, 2011).

its own right,⁶ but that it might also represent a pre-condition for enabling compliance with requirements to report these transactions to TRs.⁷

4. Reporting Mandate

4.1.1 Phasing implementation

Question 11: MAS seeks views on the proposal to implement the reporting obligation in phases, specifically on the proposal to include interest rate, foreign exchange and oil derivative contracts in the first phase.

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 creates a significant burden for them. This is particularly true given that these reporting requirements are being introduced in numerous jurisdictions at almost the same time.

We generally believe that a phased-in implementation of the reporting mandate can be helpful in reducing the burden on market participants. While we welcome the fact that MAS proposes a phase-in of the reporting mandate by asset class we believe that the design of such phase-in should be based upon the varying degrees of electronification and standardization of derivatives in the different asset classes. In other jurisdictions this has been reflected by requiring compliance for foreign exchange and commodity derivatives only several months *after* compliance for interest rate derivatives.⁸ We therefore believe it might not be appropriate for MAS to require the reporting of interest rates, FX and oil derivatives at the same time. Further, MAS should consider providing also a phase-in by participant category (reflecting the varying level of their preparedness) and a phase-in of any of the timing requirements over time.⁹ MAS should note that such multi-layered phase-in approach has been proposed in other jurisdictions.¹⁰

Question 14: MAS seeks views on the proposed protocols for single-sided reporting and for the use of third party service providers to fulfill reporting obligations.

4.3.3 Single-sided reporting

The CP states that “TRs may allow for single-sided reporting (i.e. reporting by one party only)”. It further defines a protocol that, in case of single-sided reporting, would be used to determine which entity will take care of the reporting of the transaction to the TR, depending on the nature of the counterparties to the transaction.¹¹

⁶ The industry’s commitments to global regulators have therefore included ambitious targets in relation to the extent of timely, electronic confirmation for many years. See, for example, 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 on March 1, 2010 that included a commitment to the promotion and greater use of straight-through trade processing, electronification, trade date matching, affirmation and processing of trades. See http://www.newyorkfed.org/newsevents/news/markets/2010/100301_letter.pdf

⁷ This is especially true where regulation requires counterparties to report information about their transactions in OTC derivatives to a TR, which often includes the reporting of the actual confirmation.

⁸ While MAS’ proposal to require the reporting of transactions in interest rate derivatives in the first phase is consistent with requirements proposed in the United States, 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).

⁹ Such phase-in would initially allow longer time periods post-execution of a transaction for reporting that would be reduced over time, hereby allowing market participants to adjust to the new requirements.

¹⁰ 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).

¹¹ The “ranking” proposed by MAS would be 1. foreign entity (if this entity is willing to report), 2. financial entity, and 3. non-financial entity.

We welcome MAS' willingness to permit single-sided reporting of transactions to the TR. This approach is not only in line with the one that has been taken by other jurisdictions¹² but it would also reflect current market practice. As a matter of fact, 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 most efficient but it also seems the best way to ensure the accuracy of the data that is stored in the TR in any case. We also agree with the protocol as proposed by MAS, as we believe that, in many cases, the transaction will actually be reported by a foreign entity to the TR already. This approach helps reduce the incremental burden on market participants, and will limit the need for double reporting that might create confusion and the need for costly and time-consuming reconciliation.

4.3.4 Use of a third party

The CP states that the use of a third party to perform the reporting to a TR on behalf of counterparties is permitted. However, the counterparties will retain responsibility for the accuracy and the timeliness of the reporting.

We welcome MAS' approach of allowing counterparties the use of third parties for reporting as it provides them with additional choices of how to best satisfy their reporting obligations. We believe that permitting the use of third parties for the reporting to TRs will help enable a cost-effective and timely implementation of the reporting requirement. We also note that it is consistent with the approach that has been taken in other jurisdictions.¹³

4.4 Information to be reported

We note that the CP contains little detail regarding the information that needs to be reported to TRs. We believe that determining which data fields have to be reported to a TR is complex and challenging. 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. However, we believe that this issue can be addressed in a fairly straightforward manner.

To enable a timely and cost-efficient implementation of the reporting requirement, we recommend MAS 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. We recommend that MAS take the views of TRs into account when making the determination about the appropriate data fields.
2. All relevant elements of the transaction somehow need to be captured in TRs so they can be made available to regulatory authorities if required. We believe that MAS 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 that have

¹² See Swap Data Recordkeeping and Reporting Requirements 77 Fed. Reg. 2136 (published March 13, 2012)

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

Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Proposed Rule, 75 Fed. Reg. 75208 (Dec. 2, 2010).

been established in other jurisdictions.¹⁴ We further recommend that international regulators coordinate their efforts to establish a verified set of minimum key economic terms. This harmonization would significantly aid parties in their attempts to satisfy the reporting requirements that are established by regulators globally.

4.7 Locational requirements for TRs

Question 20: MAS seeks views on the proposal not to require reporting to domestic TRs only.

The CP states that MAS would not require the reporting of OTC derivatives transactions to local TRs only, but it would make use of a recognition framework. We welcome this flexible approach that recognizes the international nature of the OTC derivatives business. We believe that the concept of a global TR that feeds the relevant data to local regulators or into other TRs is the most efficient and cost effective approach, particularly given the complexity and global nature of the task. It will also be essential to avoid the dangers of double reporting and data fragmentation.¹⁵

We believe that the best way to avoid duplication and fragmentation of derivatives data would be to create global TRs for each asset class. However, acknowledging that some jurisdictions are likely to establish their own TRs, then, we urge MAS to carefully ensure the accuracy of the data that is held in domestic TRs and its consistency with data held in foreign TRs. We believe that this can be best achieved if international providers of Independent Verification Services (“*IVS*”, to be further defined below) are tasked with reporting of transaction data when reporting is required in multiple jurisdictions.¹⁶ In this context, the ability for counterparties to transactions to delegate the reporting to third parties and to perform single-sided reporting will also be of major importance.

7. Registration as Clearing Facility

The CP states¹⁷ that “clearing facilities may perform a chain of clearing or settlement functions, encompassing *confirmation* of transactions, substitution of credit, calculation of obligations, or otherwise facilitating the settlement of transactions”. While the concept of “confirmation” is neither referred to again nor further explained in the context of Clearing Facilities, we wonder whether MAS considers requiring the registration and regulation of confirmation facilities in the derivatives markets.

We generally believe that regulatory oversight for facilities that enable participants to confirm their transactions in OTC derivatives might be appropriate given their importance in the workflow of derivatives transactions. This view has also been reflected in rules proposed by regulatory authorities in some other jurisdictions.¹⁸ Given the amount of attention this issue has received in other jurisdictions, we would recommend MAS’ consideration of a rule recognizing an overseas RCH if it is subject to comparable requirements in its home jurisdiction, memorandums of understanding (MOUs) are exchanged between

¹⁴ Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

¹⁵ The ability to consolidate global derivatives data will be complicated by differing regulatory requirements and domestic practices. Two of the complications that are likely to arise due to differing reporting requirements are double reporting and data fragmentation. Double reporting will happen if more than one jurisdiction requires data reporting for cross-border transactions (and possibly even for transactions that do not stretch across any borders if that data had to be reported to multiple TRs). Data fragmentation occurs if the reported data is stored and/or disseminated by various entities, and cannot be easily consolidated. Both double reporting and data fragmentation can endanger the value of the transparency that is provided to regulators and the public.

¹⁶ Because derivatives transactions are often cross-border, the processing of such transactions is often facilitated by IVSs who operate internationally. We believe that using these entities for reporting, as well, would provide several benefits to MAS, international regulators and 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 be subject to multiple jurisdictional requirements, 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.

¹⁷ See Consultation Paper 7.0.1.

¹⁸ Clearing Agency Standards for Operation and Governance, 76 Fed. Reg. 14472 (published March 16, 2011).

applicable regulators, and self-assessment reports are to be provided by such overseas RCH as proposed in Section 7.2.4.¹⁹

However, if the regulation of confirmation platforms in Singapore was considered, we urge MAS to design any such regulation as such that a) it ensures a level playing field between the various competing providers of confirmation services and b) requirements imposed on confirmation platforms reflect the fact that their activities and the risks they pose are very different to those created by CCPs.

a) Ensuring a level playing field between competing providers

To ensure that all entities that provide similar, competing services are exposed to comparable regulatory requirements, MAS should note that “confirmation platforms” might employ different techniques to verify transactions and that their activity might result in varying levels of legal certainty for the transactions.²⁰ Specifically, trade affirmation and matching are nothing but two alternative techniques that are employed by these providers to lead to the same result,²¹ namely enabling the counterparties to a transaction to reach an agreement on the complete set of transaction details in an efficient and timely manner with the providers of these services performing an “independent verification”.²² Further, for several reasons,²³ the scope of a potential registration requirement should be set independent of the fact whether the provider’s activity results in the issuance of a legally binding contract or not.²⁴ To achieve both of these objectives, we recommend that MAS makes use of the concept of Independent Verification Services (“**IVS**”) as the entities that facilitate “confirmation” of OTC derivatives transactions. IVS would be defined as “entities that act independently from and on behalf of both counterparties of a transaction to facilitate the agreement of a verified record of the complete transaction details that is used for subsequent processing.”

b) Appropriately tailor the requirements to the activities of IVS

In case that MAS regarded confirmation/independent verification as an activity that required regulation as a Clearing Facility we believe that it will need to reflect the fact that the activities of IVS are very different from

¹⁹ See Consultation Paper 7.2.4

²⁰ The process of documenting derivatives transactions following execution in today’s market involves the three functions of trade enrichment, trade affirmation or matching, and attachment to a legal framework. These three steps are present in the “confirmation” of the vast majority of transactions, regardless of the execution method, whether or not transactions are centrally cleared, and whether or not they are confirmed electronically or through other means.

²¹ Trade affirmation is the process whereby one party alleges the details of a derivatives transaction to its counterparty and those details are affirmed by the counterparty if 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. Matching is the process whereby both counterparties to the derivatives transaction allege the transaction details to each other, which are then compared. Trade affirmation and matching can be used individually or together, where the parties who receive alleged details of the derivatives transaction will perform a local match to their satisfaction, and then affirm to their counterpart.

²² Automated confirmation services such as MarkitSERV provide these services electronically. Our services can be used as a means for the parties to communicate and rectify any discrepancies prior to completing a confirmation. Notably, MarkitSERV provides notification to both parties when the process of affirmation or matching is complete, thereby completing the confirmation process. MarkitSERV facilitates confirmation of derivatives transactions in several asset classes through various techniques, including affirmation, matching, as well as affirmation with local matching. Each of these methods is widely used by a variety of market participant types. If MAS was to require registration of confirmation providers, it should do so independent of the technique that they employ to achieve verification of the terms of derivatives transactions, e.g., regardless of whether they perform “matching” or “affirmation.”

²³ Otherwise such requirement might unintentionally encourage the provision of services that do *not* provide legal certainty while discouraging the provision of those that do, and it would not reflect the crucial role that these providers play in the workflow of the majority of derivatives transactions regardless of the level of legal certainty they produce. Further, it would establish an unnecessary restraint on competition as the providers of independent verification services that result in the issuance of a legally binding contract and those that only perform preliminary comparisons directly compete with each other.

²⁴ Several current providers of verification services, while their activity does not result in the issuance of a legally binding contract, generate a verified, definitive record of the transaction that is used for subsequent processing. They also establish, maintain and provide connectivity between the various execution venues, counterparties, CCPs and trade repositories to communicate transaction data to these entities. Given that these independent verification services also act as conduits of transaction data to other registered entities, their proper functioning is of crucial importance to secure timely central clearing and accurate reporting.

those that are performed by CCPs. They should hence only be expected to comply with a narrower set of requirements that are appropriately tailored to their activities.

In this context, MAS might want to take note of the approaches that have been taken in other jurisdictions. In the US, for example, the SEC provided a limited exemption from registration requirements for Omgeo for similar reasons.²⁵ The SEC was able to do so because the Exchange Act authorizes the Commission to exempt certain entities from the registration as Clearing Agency²⁶ and the SEC provided exemptions for registered matching services for securities and their derivatives.²⁷ We believe that such requirements and exemptions are equally appropriate if IVS were to be regulated as Clearing Facilities / Clearing Agencies.

8. Proposals for the regulatory framework for Trade Repositories

Question 29: MAS seeks views on the proposed definition of trade repositories to be regulated under the SFA.

The CP states that, “where a trading platform or a clearing facility regulated by MAS also acts as a TR, participants are not considered to have complied with the reporting mandate unless the TP/CF is also authorized by MAS as a TR.”²⁸

We are supportive of MAS’ general approach to the registration of entities that chose to perform several regulated activities. We believe it will help ensuring a level playing field between competing providers of comparable services and it will hold all of them to the same high standards. Specifically, we believe that TPs/CFs (or CCPs) might also want to provide confirmation services for OTC derivatives. However, in case that MAS required the regulation of confirmation platforms, it should not only require such entities to produce a complete, legally binding record of the transaction that is based on a recognized legal framework, but it should also expect such entities to register as Clearing Facilities to perform this service.

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MarkitSERV appreciates the opportunity to comment on MAS’s Consultation Paper on Proposed Regulation of OTC Derivatives in Singapore. 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.

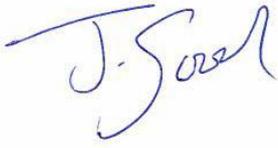
²⁵ In its exemptive order, the SEC stated that “The exemptive order and the conditions and limitations contained in it are consistent with the Commission’s [SEC] statement in the Matching Release that an entity that limits its clearing agency functions to providing matching services does not have to be subject to the full range of clearing agency regulation.” See Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, 66 Fed. Reg. 20494, 20498 (April 23, 2001).

²⁶ See Exchange Act § 17A(b)(1) (stating that the SEC may conditionally or unconditionally exempt a clearing agency from any provisions of section 17A or the rules or regulations thereunder if the SEC finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of section 17A).

²⁷ The SEC issued Operational Conditions in the Omgeo Exemptive Order which contain requirements that the company provide an audit report that addresses the areas in the SEC’s Automation Review Policies (ARPs), provide the SEC with annual risk assessment reports that address the areas in the ARPs; provide the SEC with 20 days’ notice of material changes in the regulated activities - prior approval not required; provide the SEC notice of systems outages greater than 30 minutes; to respond to SEC information requests and allow on-site inspections; provide the SEC with periodic reports on affirmation rates; preserve a copy of records for at least 5 years; do not provide clearing agency functions (such as net settlement) not permitted by the SEC exemptive order; and provide the SEC with copies of services agreements with affiliates, and notify of any material changes. Note there were also 19 “Interoperability Conditions”. In addition, if there were material changes to statements made in the exemptive order application (such as changes to the Board or ownership structure) they would have to be filed with the SEC.” See Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, 66 Fed. Reg. 20494 (April 23, 2001).

²⁸ See Consultation Paper 8.1.2.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Gooch". The signature is stylized with a large, sweeping initial "J" and a cursive "Gooch".

Jeff Gooch
Chief Executive Officer
MarkitSERV