55 Water Street
19th Floor
New York
NY 10041
United States

tel +1 212 205 7110
fax +1 212 205 7123
www.markitserv.com

12 April 2013

Senior Manager, Post-trading and OTC Derivatives
Financial Market Infrastructure
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

Submitted to OTCD@asic.gov.au

Re: **Consultation Paper 201: Derivative trade repositories**

Dear Sir/Madam:

MarkitSERV [1] is pleased to submit the following comments to the Australian Securities & Investments Commission ("***ASIC***") in response to its *Consultation Paper 201: Derivative trade repositories* (the "***Consultation Paper***" or the "***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 recognised 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 26,000 buy-side fund entities, our legal, operational, and technological infrastructure plays an important role in supporting the OTC derivatives markets in the Asia-Pacific region, North America, and Europe. In 2012, over 20 million OTC derivative transaction processing events were processed using MarkitSERV.

In Australia, MarkitSERV has provided its services to many participants in the OTC derivatives markets for years. Today, all of the major market makers, inter-dealer brokers, and buy-side institutions are using the platform. On that basis, a large portion of activity in AUD-denominated interest rate swaps is processed and confirmed via our platforms.

MarkitSERV has been actively and constructively engaged in the discussion regarding regulatory reform of financial markets. We regularly provide regulatory authorities with our insights on current market practice, for example in relation to the confirmation of derivative transactions, efficient means of reporting transactions to Trade Repositories, clearing connectivity, or portfolio reconciliation practices. We have also advised regulatory bodies on approaches to enable 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. Additionally, we have worked closely with the industry and relevant third-party providers to ensure adequate preparation, testing and data loading.

[1] MarkitSERV, a wholly owned subsidiary of Markit Group Limited, 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. Please see www.markitserv.com for additional information.
[2] ASIC Consultation Paper 201: Derivative trade repositories. March 2013.

Over the last two years, we have submitted over 30 comment letters to regulatory authorities around the world, and participated in numerous roundtables. MarkitSERV has also responded to multiple proposals from the Australian Treasury in relation to the implementation of the Pittsburgh G20 commitments for OTC derivatives.[3]

Comments

We welcome the publication of ASIC's CP on Derivative Trade Repositories and we appreciate the opportunity to provide you with our comments.

Based on significant development work over the last several years, MarkitSERV today provides market participants with a universal solution for compliance with their real-time and regulatory reporting obligations based on its established connectivity between counterparties, execution venues, clearing houses and Trade Repositories ("***TRs***"). Many major derivative dealers use MarkitSERV to comply with their Dodd Frank reporting obligations and all of them rely on MarkitSERV to meet their ODRF reporting requirements for interest rates, credit and equity derivatives. In the future, we will expand our service to reflect also the reporting requirements that will be established in other jurisdictions. For example, we have enhanced our reporting service to support reporting in Japan according to the requirements of the JFSA.

Given our extensive experience in helping market participants comply with requirements to report their OTC derivatives transactions to Trade Repositories ("***TRs")*** in multiple jurisdictions, we believe that ASIC should follow several principles when implementing similar requirements in Australia. Firstly, the reporting rules should provide counterparties with sufficient flexibility to simplify the task of reporting to an Australian derivative trade repository ("***ADTR***") as much as possible. Secondly, any reporting requirements should take into account the market practices that have been established in the global OTC derivatives markets over the years and permit that, where appropriate, such practices can be used to satisfy the newly created regulatory requirements. Such approach will not only enable a timely implementation but it will also help to avoid the creation of unnecessary cost.

Specifically, in response to ASIC's proposals in relation to the licensing and the supervision of ADTRs contained in the CP we recommend that ASIC (i) avoid harmful data fragmentation by requiring ADTRs to accept all transactions in an asset class; (ii) explicitly recognise that the provision of connectivity with ADTRs will often be performed by third parties ("middleware providers"); (iii) ensure the accuracy of the data stored in ADTRs by encouraging the reporting of a single verified record; and (iv) prevent the bundling of services both by ADTRs and other entities providing TR services.

(i) Avoiding harmful data fragmentation by requiring ADTRs to accept all transactions in an asset class

ASIC proposed that an ADTR licensee must accept derivative transaction data from participants "for all classes of derivative specified in the conditions of the license."[4] It is not clear what "all classes of derivative" will mean in practice. However, we believe that this determination, if appropriately applied, constitutes an important part of the licensing process of ADTRs as it can help prevent harmful data fragmentation.

Based on our experience in supporting market participants achieve compliance with requirements to report OTC derivatives transactions to TRs, we know that the implementation of such requirements can be complex and create significant costs. At the same time, it is of paramount importance that the reported data is indeed

[3] *See* MarkitSERV's responses to the Australian Treasury Consultation Paper on "Implementation of Australia's G-20 over-the-counter derivatives commitments" (15 February 2013 and 15 June 2012) available here and here.
[4] ASIC CP, Proposal C4(a).

available to regulatory authorities in a timely and consolidated fashion. Any fragmentation of the data can endanger the value of the transparency that ASIC hopes to create and should be avoided. We therefore believe that the above requirement proposed by ASIC should be interpreted in a manner to avoid harmful fragmentation of the data.

Experience has shown that transparency in financial markets is most useful if it is provided in a consolidated fashion. We are therefore concerned that the reporting of OTC derivatives transactions to multiple TRs could result in duplicative reporting of transactions and might create information that is not sufficiently harmonised to be aggregated. Any data fragmentation or duplicative reporting will reduce the benefit of transparency in the OTC derivatives market, so ASIC must avoid fragmentation and duplication wherever possible. We believe that the most cost-effective and efficient approach to capturing, storing, and providing information about OTC derivatives transactions to regulatory authorities around the globe would be the establishment of global TRs that feed the relevant data to local regulators or, where necessary, into other TRs. Such approach would not only be preferable because of cost and efficiency considerations, but the use of a global TR structure will also be essential to avoid the dangers of double reporting and data fragmentation.[5]

We therefore encourage ASIC to define "all classes of derivative specified in the conditions of the license" as an asset class in the common sense, consistent with the approach taken in other jurisdictions.[6] As such, an ADTR licensee in the asset class of interest rates would be required to accept reporting of all OTC derivative transactions in this asset class. On that basis, ASIC will be able to avoid situations where an ADTR might choose to only accept transactions for the more standardised and high volume products, while none of them might be willing to accept reporting for the less standardised and lower volume products. Importantly, such approach will also limit the amount of fragmentation of the data between different ADTRs that compete in an asset class.

(ii) Recognise that the provision of connectivity is often performed by third parties

ASIC requires ADTR licensees to establish policies and controls for "maintaining a continuous, reliable and secure connection between the licensee and participants for the purposes of accepting derivative trade data"[7] while it also emphasises the need for connectivity between TRs and other providers.[8]

In this context, ASIC should note that such connectivity with the various parties will often not be established by the TRs themselves but by specialised third-parties, so-called "middleware", which include MarkitSERV and other, competing providers. In today's market infrastructure architecture, many market participants, including TRs and CCPs as well as trading venues, have recognised that the use of middleware significantly reduces the cost of building connectivity between them on a bilateral basis as well as the time needed to connect to the multitude of venues. Middleware providers will also enable them to manage their workflows in the most efficient and transparent manner.[9]

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[5] 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.

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

[7] ASIC CP, Proposal C4(b)(i).

[8] "A trade repository also should apply consistent application interfaces and communication links that enable technical interconnectivity with other FMIs and service providers." ASIC CP, Paragraph 76.

[9] MarkitSERV, for example, provides a universal solution for real-time compliance with regulatory reporting obligations by providing a single middleware component that aggregates connectivity to all counterparts, execution venues, clearinghouses and TRs.

We therefore believe that, consistent with rules that have been established in other major jurisdictions,[10] ASIC should recognise current market practice by explicitly allowing the use of third parties for the purpose of establishing and maintaining connectivity.

(iii) Ensure the accuracy of the data stored in ADTRs by encouraging the reporting of a single verified record

We agree with ASIC's objective of ensuring the accuracy of the data that is held in the ADTR and its consistency with data that is held in foreign TRs.[11]

Experience has shown that these objectives can be best achieved by the use of internationally active providers of Independent Verification Services ("***IVS***").[12] With the reporting of transactions to TRs required in a growing number of jurisdictions[13] OTC derivatives transactions entered into between international counterparties will often be subject to multiple reporting obligations. We therefore welcome the approach taken by regulatory authorities in some countries of accepting the reporting of the OTC derivatives transaction by the foreign counterparty to a foreign, recognised TR.[14]

We agree with ASIC that an ADTR licensee should establish and implement policies ensuring that derivative transaction data that is reported to the ADTR "is and remains at all times complete, accurate and current."[15] In this context, ASIC should take note of established international market practice for counterparties to agree on and confirm the complete set of transaction details of their OTC derivative transaction that is reported to the TR, either by one of the counterparties or by a third party IVS such as MarkitSERV.[16] Such approach will ensure the accuracy of the data that is reported to the TR, while it also avoids the need for the TR to reconcile several records that it might otherwise receive for a single transaction.

In order to ensure the accuracy of data reported to ADTRs, ASIC should not only permit, but encourage, the reporting by only *one* party of transaction records that have been *verified by both counterparties*. To achieve this goal, ASIC should establish a framework within which ADTRs should use appropriate means to confirm the accuracy of the data they receive, differentiating by the source and nature of the data. Such approach to ensure data accuracy would significantly reduce the burden to counterparties and would be consistent with other jurisdictions.[17] For example, under CFTC rules, a Swap Data Repository ("***SDR***") will not be required to affirmatively communicate with both counterparties when data is received from a Swap Execution Facility,

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[10] 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] "We propose that an ADTR licensee must use or, at a minimum, accommodate, relevant internationally accepted communication procedures and standards to facilitate accurate, consistent, efficient and reliable acceptance, retention, use, disclosure and provision of access to derivative trade data by the trade repository." ASIC CP, Proposal C8.

[12] We define IVS 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."

[13] Because many derivatives transactions are 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 benefits to the international regulatory authorities, as well as market participants. We therefore 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.

[14] Monetary Authority of Singapore Consultation Paper P003-2012: Proposed Regulation of OTC Derivatives. February 2012. *See* Section 4.7.

[15] ASIC CP, Proposal C4(b)(ii).

[16] MarkitSERV would typically send an unverified message to the TR initially in order to allow the counterparty to report the transaction as soon as possible. However, the information would then be updated with a verified message post verification or confirmation.

[17] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 Fed. Reg. 54538 (September 1, 2011). When trade data is reported by a counterparty, the Swap Data Repository is required to notify both counterparties of the data reported and receive acknowledgement of the accuracy from both counterparties.

Designated Contract Market, Designated Clearing Organization or third-party service provider if a) the SDR reasonably believes the data is accurate, b) the data reflects that both counterparties agreed to the data and c) the counterparties were provided with a 48-hour correction period. We believe that it would be sensible for ASIC to take a similar approach.

In case that both counterparties were responsible for the reporting of the transaction to an ADTR, they should be permitted to agree between them that only one of them would perform the reporting, herewith removing the reporting obligation for the other counterparty. In case that both counterparties decided to report to the ADTR, we believe that ASIC should establish requirements to ensure that this happens without duplication. This objective could be achieved most effectively if the counterparties were to agree on the use of a common unique transaction identifier for the transaction as has been required in other jurisdictions.[18]

(iv) Prevent the bundling of services by ADTRs and entities providing TR services

ASIC intends to require ADTRs that offer ancillary services, for example trade matching, trade confirmation and portfolio compressions, to maintain these services "separately from the function of being a central collecting agency and data warehouse."[19] We agree with ASIC that industry participants should not be forced by an ADTR licensee to use any of the ancillary services provided by it, and that any decisions to use or not to use a given ancillary service provided by an ADTR should rest entirely with the market participant.

Further, we believe that ASIC should prevent situations where eligible facilities impose an unnecessary restraint on competition by bundling their service offerings. ASIC should therefore consider prohibiting ADTR licensees from bundling their TR services with other services, consistent with other jurisdictions.[20] We believe that such requirement should also apply to clearing and execution platforms and ASIC should prohibit them from bundling their clearing and execution services, respectively, with other services, including TR services.

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MarkitSERV appreciates the opportunity to comment on ASIC's Consultation Paper 201: *Derivatives trade repositories*. 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

[18] The CFTC's Unique Swap Identifier ("USI"), for example, is an identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its life time. The creation and use of the USI has been mandated by the CFTC and SEC as part of the Dodd-Frank Act. CFTC: Unique Swap Identifier Data Standard. October 2012
[19] ASIC CP, Paragraph 101.
[20] "A TR should not engage in anti-competitive practices such as product or service tying, setting overly restrictive terms of use, or anticompetitive price discrimination. A TR also should not develop closed, proprietary interfaces that result in vendor lock-in or barriers to entry with respect to competing service providers that rely on the data maintained by the TR." Principle 18: CPSS-IOSCO: Principles for Financial Market Infrastructures (April 2012).