

04 February 2013

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Submitted via: jstevenson@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

Re: **CSA Consultation Paper 91-301 – Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting**

Dear Sir/Madam:

MarkitSERV¹ is pleased to submit the following comments to the Canadian Securities Administrators (“**CSAs**”) in response to their Consultation Paper *Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting* (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

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.

Please see www.markitserv.com for additional information.

² Canadian Securities Administrators, “CSA Consultation Paper 91-301 – Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting” (December 6, 2012).

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 26,000 buy-side fund entities, our legal, operational, and technological infrastructure plays an important role in supporting the OTC derivatives markets in North America, Europe, Asia, and elsewhere. In 2012, over 20 million OTC derivative transaction processing events were processed using MarkitSERV.

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 (“**TRs**”), 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. Over the last two years, we have submitted over 30 comment letters to regulatory authorities around the world, and participated in numerous roundtables.

In Canada, the major banks and an increasing number of asset managers, pension funds, hedge funds, fund administrators and other market participants use the MarkitSERV platforms to process their derivatives transactions. In addition to increasing the efficiency with which trades are legally confirmed, MarkitSERV has dedicated substantial resources to establishing the necessary connectivity to help Canada-based market participants comply with upcoming regulatory requirements such as clearing and reporting.

Comments

We welcome the publication of the CSAs’ Consultation Paper and we appreciate the opportunity to provide you with our comments. We believe that the CSAs, when implementing a requirement for Canadian market participants to report their transactions in OTC derivatives to Trade Repositories, should follow several principles. Firstly, the Data Reporting Rules should provide counterparties with sufficient flexibility to simplify the task of reporting to TRs as much as possible. Secondly, the requirements should take into account 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 the proposals contained in the CP we recommend that the CSAs a) phase-in compliance with the reporting requirements also by product category; b) provide sufficient flexibility and clarity on how to determine the responsibilities for data reporting; c) use a two-pronged approach to determine which data has to be reported; d) implement the proposed measures to prevent harmful fragmentation of the data; and e) reflect the different qualities of data that TRs might receive when defining how they will ensure data accuracy.

a) Data reporting requirements should be phased-in by asset class

The CSAs proposed that, with the Data Reporting Rules becoming effective 15 days after approval by the Minister, the actual reporting to TRs would start 6 months after such date for dealers and 9 months thereafter for non-dealers.³

³ CSA Consultation Paper, Part 6: Effective Date.

Based on our experience, awareness, education and understanding are critical components for the proper implementation of new regulatory requirements, and requisite time is needed for all market participants to come into compliance. We believe that any compliance dates for Data Reporting should be set such that they provide the affected market participants with sufficient time to analyze, build, adjust and test their systems and procedures before they are required to be in compliance with the requirements. This need has also been explicitly acknowledged by regulatory authorities in other major jurisdictions.⁴ We therefore support the CSAs' approach of setting compliance dates for reporting to TRs such that all market participants are provided with some additional time to prepare for compliance. We further support the CSAs' use of different compliance dates depending on the nature of the counterparties to the transaction. We believe that such approach appropriately reflects the different levels of preparedness of the various counterparty categories, and also the resources that are available to them to actively prepare for change.

However, based on our experience in helping market participants analyze and comply with reporting requirements in other jurisdictions,⁵ we believe that the CSAs should consider making use of a more granular phasing-in for the Data Reporting requirements. Specifically, when designing a compliance schedule, they should also take into account the characteristics of the different asset classes. This is because derivatives across the various asset classes vary widely in relation to their degree of product standardization and electronification, the number of product variations, the nature and number of counterparties, the size of the asset class as well as the amount of central clearing that occurs already today. All of those factors impact the ability of market participants to report transactions in the respective asset classes to TRs.

Based on these considerations, and consistent with the approach taken in other jurisdictions,⁶ we recommend that the CSAs require compliance with the Data Reporting requirements first in the asset classes of interest rates and credit as these are at a more advanced stage of development. Compliance in the other asset classes, i.e., foreign exchange, equities, and commodities, should only be required at a later stage.⁷

b) The CSAs should provide sufficient flexibility and clarity on how to determine the responsibilities for data reporting

The CSAs propose for the reporting to the TR to be performed by the Reporting Counterparty ("**RCP**"). The RCP would be the derivatives dealer in a transaction where it is facing a non-dealer, otherwise both counterparties report unless they agree that one of them is the RCP. In a cross-border transaction the RCP would be the local counterparty. However, it can delegate this task to the non-local counterparty which is the outcome expected by the CSAs if the non-local counterparty is a dealer.⁸

We believe that, to allow for a timely and cost-effective implementation of the Data Reporting requirements, counterparties should be provided with sufficient flexibility in satisfying their reporting obligations, including the option of delegating this task to a third party. Further, depending on the nature of the counterparties, the party that is better prepared for reporting should generally perform this task. On the other hand, counterparties and other relevant parties will need to have sufficient clarity about who will ultimately be responsible for the

⁴ See, for example, the SEC's 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

⁵ MarkitSERV 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. Many major derivative dealers are using MarkitSERV to comply with their Dodd Frank reporting obligations.

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

⁷ The CSAs might also want to consider establishing timelines per sub-product category in an asset class as necessary since it is our experience that even within an asset class the levels of automation can vary significantly. For example, a customized product such as a basket transaction done for an end-user client may require further implementation phasing due to its complex structure.

⁸ CSA Consultation Paper, Part 3: Data Reporting

reporting of which data set to the TR. The lack of such clarity is likely to result in confusion, additional legal, operational and technical cost, and also under- or over-reporting, and should therefore be avoided.

We believe that the CSAs' proposed approach to determine which counterparty is responsible for the Data Reporting strikes an appropriate balance between flexibility and clarity, and we expect market participants will be able to establish clear arrangements within this framework. Further, we support the CSAs proposal to permit a party that has an obligation to report data to a TR to delegate the reporting to a third party.⁹ The CSAs should note that the delegation of reporting is also permitted in other jurisdictions, and has been recognized by many counterparties, as well as other entities such as execution venues, as an effective way to comply with their reporting obligations in a timely and cost efficient manner. We agree with the CSAs that the RCP, when delegating its reporting obligations, should remain responsible for ensuring the timely and accurate reporting.

Finally, in situations where both counterparties report the transaction to the TR, for instance because they could not agree on who is the RCP, the CSAs' Data Reporting requirements should be designed to avoid duplicative reporting. This objective could be achieved if the counterparties were to agree on the use of a common identifier for the transaction as has been required in other jurisdictions.¹⁰

c) A two-pronged approach should be used to define the data that has to be reported to the TR

The CSAs require that creation data, life cycle data, and valuation data (for both cleared and uncleared transactions) should be reported to the TR.¹¹ We believe that harmonization of the reporting requirements between the various jurisdictions will create greater efficiencies, lower costs and improved data quality. In this context, the CSAs should note that the two-pronged approach that has been established in the United States¹² seems an effective way of achieving the regulatory goals of data reporting to TRs. On that basis, parties report a limited set of economic data (as normalized data fields where available) as well as the confirmation data, to the TR. More specifically the following data should be reported:

- A basic data set that contains the key economic terms of the transaction in normalized data fields should be reported to a TR for every derivative transaction. Such data set could be standardized across asset classes and products, and the number of additional fields that are asset class specific would be very limited. We recommend that international regulators coordinate their efforts and also take the views of TRs into account when establishing an appropriate set of minimum key economic terms to be reported to TRs as the cost of compliance increases in accordance with regulatory agency differences.
- Further, as is required in the United States, confirmation data for a transaction would be captured in a TR. Counterparties will therefore also report the transaction confirmation data (either as a copy/electronic image of the paper confirmation or in normalized data fields where available) to the TR for each OTC derivatives transaction.

We believe that the CSAs should also consider making use of such approach for Data Reporting in Canada.

⁹ "The reporting counterparty may delegate its reporting obligation, but remains responsible for ensuring the timely and accurate reporting of derivatives data required by this Rule." CSA Consultation Paper, Part 3: Data Reporting.

¹⁰ "The CFTC's Unique Swap Identifier ("USI") is a unique identifier assigned to all swap transactions which identifies the transaction (the swap and its counterparties) uniquely throughout its duration. 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.

¹¹ Additionally, the CSAs would require the reporting of all transactions that are outstanding on the effective date unless they expire within 365 days thereafter. CSA Consultation paper, Part 3: Data Reporting.

¹² Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

Further, given that the CSAs use the RCP concept to determine the responsibility for Data Reporting, it will be beneficial for counterparties to agree on the RCP as one of the terms of their transaction. Such agreement would remove the potential for confusion over who is reporting and herewith prevent both duplicative reporting and under-reporting. The CSAs should note that, in other jurisdictions, counterparties are required to choose which party will be designated the RCP as part of their transaction confirmation.¹³

d) The CSAs should implement the proposed measures to avoid harmful data fragmentation

The CSAs' proposals would require the designated TR to accept derivatives data for reporting purposes from its users for *all* derivatives of the asset class (or classes) set out in its designation order. Additionally, the RCP must ensure that all data related to a particular transaction, including all lifecycle events, is reported to *the same* designated TR to which the initial report was made.

Based on our experience in supporting market participants across multiple jurisdictions to achieve compliance with requirements to report OTC derivatives transactions to TRs, we know that the implementation of such requirements can be complex and creates significant costs. At the same time, it is of paramount importance that the reported data is indeed available to regulatory authorities in a consolidated fashion. Any fragmentation of the data can endanger the value of the transparency that the CSAs hope to create and should be avoided. We therefore believe that the above requirements proposed by the CSAs are appropriate and necessary to avoid harmful fragmentation of the data.

e) Requirements for TRs to ensure data accuracy should reflect the different qualities of data that they might receive

We agree with the CSAs that ensuring the accuracy of the data that is reported to the TR is of paramount importance.¹⁴ In this context, the CSAs should note that it is 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 such as MarkitSERV.¹⁵ Such approach ensures 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.

We therefore believe that the CSAs should not only permit, but encourage, the reporting by only *one* party of transaction records that have been *verified by both counterparties*. For this purpose, the CSAs should establish a framework within which TRs would be required to 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.¹⁶ 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, 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

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

¹⁴ "The reporting counterparty for a transaction, subject to the reporting requirements of this Rule, must make a report required by this Part in real time unless it is not technologically practicable to do so." CSA Consultation Paper, Part 3: Data Reporting.

¹⁵ MarkitSERV would typically send an unverified message 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.

¹⁶ 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.

provided with a 48-hour correction period. We believe that it would be sensible for the CSAs to take a similar approach.

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MarkitSERV appreciates the opportunity to comment on the CSAs' Consultation Paper, "*Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting.*" 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