

15 February 2013

Financial Markets Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

Submitted via: financialmarkets@treasury.gov.au

Re: **Implementation of Australia's G-20 over-the-counter derivatives commitments**

Dear Sir/Madam:

MarkitSERV¹ is pleased to submit the following comments to the Australian Treasury (the "**Treasury**") in response to its Consultation Paper *Implementation of Australia's G-20 over-the-counter derivatives commitments* (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 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.

In Australia, MarkitSERV has provided its services to participants in the OTC derivatives markets for many years. Today, all of the major market makers, inter-dealer brokers, and buy-side institutions are using the platform. On that basis, we believe that 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

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 Australian Treasury: "Implementation of Australia's G-20 over-the-counter derivatives commitments". December 2012.

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.

Comments

We welcome the publication of the Australian Treasury's Consultation Paper and we appreciate the opportunity to provide you with our comments that focus on the implementation of requirements to report transactions to Trade Repositories ("**TRs**"). We believe that the Treasury, when implementing its trade reporting requirements for Australian market participants (the "**Trade Reporting Requirements**") should follow several principles. Firstly, the 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. Secondly, the Trade Reporting Requirements should be designed to provide counterparties with sufficient flexibility to simplify the task of trade reporting as much as possible according to their individual needs and resources available to them. Following these principles will not only help avoiding the creation of unnecessary cost but it will also enable a timely implementation of these requirements.

Question 1: Do you have comments on the costs and benefits of complying with the trade reporting obligation, as outlined above, from the point of view of your business and/or that of your customers?

The Treasury notes that "there may be some costs associated with establishing systems that can efficiently capture the necessary information and transmit this to and from trade repositories."³ It further states that "the provision of data to a trade repository requires that a market participant either has some direct connectivity to the trade repository, or can use an agent or other intermediary arrangement to transmit and access necessary information".⁴

We agree that the introduction of a requirement for counterparties to report their transactions in OTC derivatives to a TR can create costs for them and that the establishment of the necessary connectivity plays a relevant role in this context. We believe that the Treasury can facilitate a cost-effective implementation of its Trade Reporting Requirements by permitting counterparties to delegate their reporting responsibilities to third-party providers and make use of the connectivity that these might have already established.⁵ The Treasury should note that the delegation of reporting to TRs 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. However, we believe that any market participant who delegates its reporting obligations should remain responsible for ensuring the timely and accurate reporting.

Question 2: Do you have comments on the proposal to mandate a broad range of derivatives subject to the phase-in and exceptions outlined below? Or is there another option you prefer? If so why?

³ Australian Treasury Consultation Paper, Cost of Reporting, page 10.

⁴ Australian Treasury Consultation Paper, Cost of Reporting, page 10.

⁵ MarkitSERV, for example, provides a universal solution for compliance with real-time and regulatory reporting obligations by providing a middleware service that has established connectivity between counterparties, execution venues, clearing houses and TRs. Many major derivative dealers are using MarkitSERV to comply with their Dodd Frank reporting obligations and all major dealers use 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 are currently in the final stages of enhancing the reporting service to support reporting in Japan according to the requirements of the JFSA.

The Treasury notes that, “for most OTC derivatives product classes, the vast bulk of transactions will typically involve at least one counterparty from the group of larger market participants. These larger firms may therefore be well positioned, at least operationally, to act as agents for counterparties in using trade repositories.”⁶

As a general principle, we believe that the Treasury should aim to provide market participants with sufficient flexibility and clarity on how to determine the responsibilities for the reporting of the transactions they enter into. We agree that some larger counterparties are likely to be better positioned to report to TRs and it would therefore be most efficient overall if they performed the reporting. However, it might well be that market participants will require some further clarification on which counterparty is actually responsible for the reporting. Approaches that the Treasury could pursue in this context include:

- A Reporting Counterparty (“**RCP**”) is determined for each transaction based on the characteristics of the counterparties,⁷ and the non-RCP will not be responsible for the reporting. If the Treasury pursued an RCP approach, it would be beneficial for the counterparties to agree on the RCP as one of the terms of their transaction to remove the potential for confusion over who is reporting and prevent both duplicative reporting and under-reporting. In some jurisdictions that rely on the RCP approach, counterparties are therefore required to choose which party will be designated as the RCP as part of their transaction confirmation.⁸
- If both counterparties were responsible for the reporting, they should be permitted to agree between them that only one of them would perform the reporting for both, herewith removing a reporting obligation for the other counterparty. In case that both counterparties decided to report to the TR, the Treasury 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 (UTI) for the transaction as has been required in other jurisdictions.⁹

Regardless of which of these approaches the Treasury is to choose, it should explicitly allow the counterparties to delegate their reporting obligations to a third party, in line with other jurisdictions. Such approach will provide them with the necessary flexibility to enable a timely and cost-effective implementation of the Trade Reporting Requirements.

Accuracy of data

Ensuring the accuracy of the data that is reported to the TR will be of paramount importance. In this context, the Treasury 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.¹⁰ Such approach can 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.

We therefore believe that the Treasury 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, it should establish a framework within which TRs would be required to use appropriate means to confirm the accuracy of the data

⁶ Australian Treasury Consultation Paper, Cost of Reporting, page 11.

⁷ Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

⁸ Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

⁹ “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 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.

¹⁰ MarkitSERV would typically send an unverified message initially in order to allow the counterparty to report the transaction to the TR as soon as possible. However, the information would then be updated with a verified message post verification or confirmation.

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.¹¹ For example, under CFTC rules, a Swap Data Repository (“**SDR**”) will not be required to affirmatively communicate with both counterparties when it received the data from a Swap Execution Facility, Designated Contract Market, Designated Clearing Organization or third-party service provider and 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 the Treasury to take a similar approach.

Backloading of existing transactions

We believe that the Treasury should carefully consider issues related to the potential backloading of existing derivative transactions into TRs and ensure that any such requirements provide sufficient clarity to market participants about the scope of their obligations.¹² Based on the experience made in preparation for compliance with the CFTC’s reporting requirements for “historical swaps”¹³ we believe that such requirements can create a number of significant challenges. We encourage the Treasury to specify clearly which transactions will need to be reported and, specifically, we recommend that any potential backloading requirement should apply only to those transactions executed in the past that still exist as of the compliance date.¹⁴ This is because requiring firms to backload transactions into TRs that have already matured or been terminated prior to the compliance date creates a potentially significant burden on firms but only limited value for regulatory authorities.

Question 4: Do you have comments on the proposal timetable for implementing the trade reporting obligation? Or is there another option you prefer? If so, why?

The Treasury proposes phasing in the Trade Reporting Requirements over time with the obligation commencing by the end of 2013 for major financial institutions, by Q2/2014 for domestic financial institutions and at the end of 2014 for end users.¹⁵

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 Trade Reporting should be set as such that they provide the affected market participants with sufficient time to analyze, build, adjust and test their systems and establish the necessary procedures before they are required to be in compliance with the requirements. This need has also been explicitly acknowledged by regulatory authorities in other jurisdictions.¹⁶ We therefore support the Treasury’s approach of setting compliance dates for reporting to TRs as such that all market participants are provided with some additional time to prepare for compliance. We further support the Treasury’s proposal of differentiating 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

¹¹ 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.

¹² For example, in some jurisdictions it was unclear whether such requirement applied only to transactions that were entered into after the effective date of the regulation, or also to those that had been outstanding already at that time.

¹³ Swap Data Recordkeeping and Reporting: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35200 (June 12, 2012).

¹⁴ In contrast, it should not apply to those transactions that existed at the time that the regulations became effective but have ceased to exist by the compliance date.

¹⁵ Australian Treasury Consultation Paper, Timetable for implementation, page 11.

¹⁶ See, for example, the SEC 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.

various counterparty categories, and also the resources that are available to them to actively prepare for compliance.

The Treasury notes that “within each phase, there would be scope for further differentiating between instrument classes, according, for example, to the availability of relevant licensed trade repositories.”¹⁷ Based on our experience in helping market participants analyze and comply with requirements to report their transactions to TRs in other jurisdictions,¹⁸ we recommend that the Treasury indeed consider making use of a more granular phasing-in for the Trade Reporting Requirements. Specifically, when designing a compliance schedule, it 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 that has been taken in major other jurisdictions¹⁹ we recommend that the Treasury require compliance with the Trade Reporting Requirement, including any requirement to backload existing transactions, 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.^{20, 21}

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MarkitSERV appreciates the opportunity to comment on the Australian Treasury’s Consultation Paper on the *Implementation of Australia’s G-20 over-the-counter derivatives commitments*. 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

¹⁷ Australian Treasury Consultation Paper, Timetable for implementation, page 13.

¹⁸ For example in the United States, Europe, Japan, Hong Kong, Canada, and South Africa.

¹⁹ Swap Data Recordkeeping and Reporting, 77 Fed. Reg. 2136 (Jan. 13, 2012).

²⁰ Specifically, we recommend for compliance in these asset classes to start six months after the Trade Reporting Requirements are in place for interest rates and credit.

²¹ The Treasury 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.