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20 January 2014

**Securities  
Commission Malaysia**  
Ms. Tai Mei Ling

**Bank Negara Malaysia**  
Mr. Chan Kah Som  
Ms. Kathleen Wong

**Perbadanan Insurance  
Deposit Malaysia**  
Mr. Chiok Foong Chuan

Submitted to [TR@seccom.com.my](mailto:TR@seccom.com.my)

Re: **Joint Public Consultation Paper Trade Repository Reporting Requirement for Over-the-Counter Derivatives**

Dear Sir/Madam:

Markit<sup>1</sup> is pleased to submit the following comments to the Securities Commission Malaysia, Bank Negara Malaysia and Perbadanan Insurance Deposit Malaysia (together, the “**Regulators**”) in response to the Joint Public Consultation Paper Trade Repository Reporting Requirement for Over-the-Counter Derivatives (the “**Consultation Paper**” or the “**CP**”).<sup>2</sup>

## Introduction

Markit is a provider of financial information services to the global financial markets, offering independent data, valuations, risk analytics, and related services across regions, asset classes and financial instruments. Our products and services are used by a large number of market participants to reduce risk, increase transparency, and improve the operational efficiency in their financial markets activities.

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<sup>1</sup>Markit is a financial information services company with over 3,000 employees in North America, Europe, and Asia Pacific. The company provides independent data and valuations for financial products across all asset classes in order to reduce risk and improve operational efficiency. Please see [www.markit.com](http://www.markit.com) for additional information.

<sup>2</sup> No. 1/2013: “Joint Public Consultation Paper Trade Repository Reporting Requirement for Over-the-Counter Derivatives.” 20 November 2013

Most of Markit's processing services are provided by MarkitSERV,<sup>3</sup> a company that offers 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, MarkitSERV provides trade processing, confirmation, and matching 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 globally over 2,900 firms, including agents for over 29,000 buy-side fund entities, using the various MarkitSERV platforms that process millions of OTC derivative transaction processing events every year, our legal, operational, and technological infrastructure plays an important role in supporting the OTC derivatives markets in North America, Europe and the Asia-Pacific region.

MarkitSERV has had a significant presence in the APAC region for many years with currently 75 regionally-based employees and over 450 customers. The MarkitSERV platforms have established connectivity with five CCPs in the region and we provide reporting capabilities in four of those jurisdictions. In Malaysia we have regular interaction with the major buy-side and sell-side participants. As of today, several local domestic Malaysian banks are MarkitSERV clients whilst others are in the process of onboarding.

Markit has been actively and constructively engaged in the discussion regarding regulatory reform of the financial markets. We regularly provide regulatory authorities with our insights on current market practice, for example in relation to valuation methodologies, liquidity measurement, the use of reliable and secure means to provide daily marks, or to performing pre-trade credit checks to achieve clearing certainty. We have also advised regulatory bodies on potential approaches to enable the 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 their regulatory obligations. Over the last several years, we have submitted over 90 comment letters<sup>4</sup> to regulatory authorities around the world and participated in numerous stakeholder meetings.

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<sup>3</sup> 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](http://www.markitserv.com) for additional information.

<sup>4</sup> This number includes responses submitted by MarkitSERV, a now fully-owned subsidiary of Markit Group.

## **Markit's comments**

We welcome the publication of the Consultation Paper and we appreciate the opportunity to provide you with our comments that reflect our extensive experience in supporting market participants in other jurisdictions with the reporting of OTC derivatives transactions to trade repositories (“**TRs**”).

With many derivatives transactions being cross-border, their processing is often facilitated by internationally operating providers of middleware services.<sup>5</sup> 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. Experience has shown that the use of such entities for the reporting to TRs provides benefits to the international regulatory authorities as well as to market participants and delegation to such entities has therefore been widely used in the jurisdictions where reporting obligations have already been established. For example, the majority of Swap Dealers that are required to report OTC derivatives transaction data to TRs under the CFTC's rules in the United States has delegated their various reporting obligations to such third parties.

## **Reporting arrangements**

The Regulators proposed that “*Each reporting entity...who is a principal party to OTC derivatives transactions has an obligation to report the required information directly to the trade repository.*”<sup>6</sup>

### **a) Double-sided vs single-sided reporting**

***1. The proposed reporting requirements do not currently contemplate allowing either one party to a transaction to report to the trade repository as an alternative to each reporting party separately reporting the transaction. This is in view of the objectives for reporting as set out in paragraphs 1.2 and 1.3, in particular the relevance of information for resolution purposes. Please provide your comments, if any, on this.***

The proposed Reporting Arrangements would establish a so-called “double-sided” reporting regime in Malaysia. However, we believe that it might be worthwhile for the Regulators to consider establishing a “Reporting Counterparty” (or “**RCP**”) approach

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<sup>5</sup> Such entities can collectively be described as Independent Verification Services (“**IVS**”) or “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.”

<sup>6</sup> Consultation Paper, Par. 4.1.

instead. Such approach, where in most cases only one party to the transaction is responsible for the reporting of the transaction to the TR, has also been used in several other jurisdictions.

Our view is based on the experience we have gathered in supporting reporting firms both in the United States, where an RCP or “one-sided reporting” approach has been established,<sup>7</sup> and in Europe, where both counterparties have an obligation to report to the TR.<sup>8</sup> Our experience has shown that the reporting of a *single, verified* record of the transaction data *by one party* to the transaction provides the advantages of creating clarity, avoiding duplication, reducing the potential for error, and simplifying the workflow. It also leads to a significant reduction in the cost of reporting and minimizes the burden for end users. On the other hand, it will not result in any reduction in the quality of the data that is reported to the TR as long as the reported record has been verified and confirmed by both parties to the transaction.

However, if the Regulators decided for the reporting obligation to remain with both counterparties, we believe it would be useful to establish requirements to ensure that this reporting 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, which is a requirement in other jurisdictions.<sup>9</sup>

#### **b) Reporting “directly” to the trade repository**

The Regulators also proposed requiring the reporting of the required information “directly” to the trade repository.<sup>10</sup> We believe that the Regulators should be careful with the use of the word “directly” in this context as it might create unnecessary uncertainty for market participants in relation to the use of third parties.

As described above, in the various jurisdictions where an obligation to report derivatives transactions to TRs has already been established, many reporting parties have delegated the reporting to third parties. It will therefore be important that such option is also provided in Malaysia without imposing any unnecessary restrictions on the reporting parties’ ability of to delegate. In this context the Regulators should note that, as part of some requirements that are unrelated to TR reporting, the CFTC last year required counterparties to send transactions “directly” to the relevant CCP. This

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

<sup>8</sup> ESMA Final Report: Draft technical standards under the Regulation (EU) No 648/2012 of the European Parliament and of the council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories. 27 September 2012.

<sup>9</sup> The CFTC’s Unique Swap Identifier (“USI”), for example, 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.

<sup>10</sup> Consultation Paper, Par. 4.1.

requirement caused significant uncertainty in the marketplace based on market participants' concerns that they might not be permitted to use third parties for the routing of transactions, even though the Commission had previously explicitly permitted delegation for this task.

To avoid causing similar uncertainty when introducing the reporting obligation in Malaysia we recommend that the Regulators avoid the use of "directly" in the final rules whilst explicitly permitting the use of third parties for the reporting to TRs.

### **c) Treatment of foreign branches**

***2. What are the operational issues, legal impediments or challenges that your organisation may face in reporting the OTC derivatives transactions originated, negotiated, arranged or booked by overseas branches? How frequent does your organisation consolidate these transactions for purposes of internal risk management monitoring?***

The Regulators specify that "the reporting entity ... must ensure that their reporting cover all transactions to which the reporting entity is a principal party, including transactions which are originated from, negotiated, arranged or booked by its domestic or foreign branches."<sup>11</sup>

We believe that requiring a Malaysian reporting entity to report on behalf of a foreign branch will often create difficulties and many firms would find it easier to have their foreign branches to report themselves. We therefore recommend that the Regulators provide reporting entities with sufficient flexibility in this respect. Specifically, for transactions entered into by foreign branches, the Regulators should allow firms to choose whether the local entity or the foreign branch will report, whilst the local reporting entity remains responsible for the reporting.

### **d) Use of a reporting agent**

***2. Please provide your comments on the proposed scope of and conditions for the use of reporting agents.***

The Regulators state that "a reporting entity may appoint a reporting agent to report the transaction on its behalf..."<sup>12</sup>

As stated above, in other jurisdictions many counterparties have decided to use third parties for the reporting of their transactions to TRs and we believe that allowing delegation will be helpful to enable a timely and smooth implementation of the reporting

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<sup>11</sup> Consultation Paper, Par. 4.2.

<sup>12</sup> Consultation Paper, Par. 4.5.

requirement also in Malaysia. We also welcome the Regulators' recognition of current market practice in relation to the confirmation and the processing of derivatives transactions by allowing for the delegation of reporting to platforms where transactions are "electronically confirmed, matched or executed on a third party facility."<sup>13</sup> However, we believe that the Regulators should consider the following comments in this respect:

- By explicitly describing the types of entities that can be reporting agents, the Regulators might unnecessarily restrict the number and types of parties that the counterparties can delegate the reporting to. For example, the confirmation of transactions can occur using different means and some processing platforms do not actually produce a "confirmation". On the other hand, we see little reason why counterparties should be prohibited from delegating the reporting to parties that are very capable of performing this role, but happen to not be involved in the described activities. On that basis we recommend allowing delegation of the reporting obligation to any sufficiently qualified third party, including the ones listed, whilst the responsibility for the reporting will remain with the reporting party.
- We recommend that the Regulators provide further clarification in relation to the reporting of transactions that are centrally cleared. The Regulators proposed to allow the use of a reporting agent "where OTC derivatives transactions are cleared through a central clearing counterparty (CCP)"<sup>14</sup> as an alternative to other situations, seemingly suggesting that there would be only be a single "reporting agent" for each transaction. However, this seems to ignore the fact that transactions that are ultimately cleared mostly originate from an uncleared transaction between the two counterparties (the so-called alpha trade) which is then replaced (through novation) with two uncleared transactions where these counterparties are facing the CCP (beta and gamma trades). Any delegation of the reporting obligation for a "cleared" transaction to a CCP can only cover the beta/gamma trades. We therefore recommend that the Regulators explicitly specify the respective reporting obligations for the three types of transactions that exist for a "cleared" trade and recognize that, for a single "cleared" transaction, the reporting can be delegated to more than one reporting agent.

## **Frequency of the reporting**

***1. Please provide your organisation's comments on the proposed data set provided in Annex 1 and reporting frequency for the reporting transaction-level data and collateral information. Please highlight the specific operational or data***

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<sup>13</sup> Consultation Paper, Par. 4.5(a).

<sup>14</sup> Consultation Paper, Par. 4.5(b).

***issues that your organisation may face to fully comply with the proposed reporting requirements.***

The Regulators proposed separating the reporting of the primary economic terms (PET) from the reporting of the collateral information.<sup>15</sup>

We believe that such separation is appropriate as the reporting of these datasets would happen at different times and frequencies, whilst the information that is needed for the reporting will also be generated out of different systems. It should be noted that a similar approach has been taken in other jurisdictions.<sup>16</sup> On that basis, it will be important that the permission to delegate the reporting to a third party is explicitly and separately provided for collateral-related data, allowing counterparties to delegate the reporting of collateral data to a reporting agent that might be different to the one that performs the reporting of other datasets, e.g. the PETs, if they so desire.

**Market values**

The CP uses the terms “values”<sup>17</sup> and “market values”<sup>18</sup> interchangeably. However, it is not clear what these terms mean and how the relevant values or market values would be generated by the reporting parties.

To reduce uncertainty around these numbers, we recommend that the Regulators consider following the European example where EMIR explicitly defines the meaning of “mark-to-market” and “mark-to-model”. Generally those valuations would be generated by taking into account all available data sources, with sufficient independence embedded in the process and data sources to minimize conflicts of interest and the potential for manipulation.<sup>19</sup>

**Phase-in of the reporting to TRs**

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<sup>15</sup> Consultation Paper, Par. 4.15. “On each reporting day, reporting entities should (a) Report the primary economic terms (PET) of OTC derivatives transaction of any new derivatives transactions, entered into on the previous day; and (d) Update collateral information on a per counterparty basis.”

<sup>16</sup> For example, the reporting obligations under EMIR. ESMA Final Report: Draft technical standards under the Regulation (EU) No 648/2012 of the European Parliament and of the council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories. 27 September 2012.

<sup>17</sup> “Accordingly, reporting entities are required to report **transaction-level data** to the trade repository, which include the primary economic terms (PET) and values of each derivatives transaction;” Consultation Paper, Par. 4.10.

<sup>18</sup> “Update the market values of all outstanding OTC derivative transactions. This should exclude transactions referred in paragraph 4.15(a);” Consultation Paper, Par. 4.25(c).

<sup>19</sup> ESMA Final Report: Draft technical standards under the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories.

**1. Please provide your views on the proposed phase-in approach for the reporting of trades to the trade repository.**

The CP proposes that “reporting to a trade repository will be implemented in three phases, according to the type of reporting entity.”<sup>20</sup> This would include a transitional period of 6-months for reporting entities to start reporting<sup>21</sup> and a phase-in period of 6-months, 12-months and 18-months.<sup>22</sup>

Based on our experience in assisting market participants with the reporting of their derivatives transactions to TRs in various jurisdictions, we know about the significant burden that the introduction of such requirements imposes.<sup>23</sup> We believe that the provision of sufficient time to allow market participants to prepare for the introduction of new requirements will ultimately enable a timely and cost-efficient implementation. We therefore welcome the use of both a transitional period and a phased-in implementation.

We commend the Regulators for proposing to phase in the reporting obligations and also appreciate that the Regulators plan to “further consult the industry on the proposed commencement date.”<sup>24</sup> In this context we recommend that the Regulators take the following factors into account: a) the timing of implementation of reporting requirements in other jurisdictions;<sup>25</sup> b) the time of the year;<sup>26</sup> and c) the specific day of the week when compliance shall kick in.<sup>27</sup>

We recommend for the Regulators to provide firms with an extended grace period as appropriate, to be determined in consultation with the industry, to start complying with the reporting requirements following the publication date of the Regulators’ final rules. We also recommend differentiating between asset classes. Specifically, the initial start date should apply to the reporting of derivatives only in the more standardized asset classes of interest rates and credit whilst reporting in other asset classes would be required 6 months thereafter. We would also recommend phasing the reporting of

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<sup>20</sup> Consultation Paper, Par. 5.1.

<sup>21</sup> Consultation Paper, Par. 5.3.

<sup>22</sup> Consultation Paper, Par. 5.1.

<sup>23</sup> This is particularly true as such reporting requirements are being introduced in numerous jurisdictions at almost the same time.

<sup>24</sup> Consultation paper, Par. 5.2.

<sup>25</sup> Similar requirements to report derivatives transactions to TRs are scheduled to become effective over the coming months in several other major jurisdictions, including Hong Kong, Australia, and Europe. On that basis, the relevant dedicated resources that would also be required to prepare for the introduction of the reporting requirements in Malaysia will already be tied up at many of the major, internationally active firms.

<sup>26</sup> For example, firms will typically experience a development freeze in December and will also be short staffed. This time of the year thus does not seem ideal for the implementation of any new requirement.

<sup>27</sup> Specifically, implementation of new requirements on a Monday will allow for testing over the weekend, outside of business hours.

valuations and collateral by 6 months, which is consistent with the approach that has been taken in other jurisdictions.

### **Backloading**

The CP requires reporting entities to ensure that “all outstanding derivatives transactions with remaining contractual maturity of more than six months as at the commencement date are fully reported to the trade repository.”<sup>28</sup>

We welcome the setting of a minimum maturity for the reporting of outstanding transactions and the fact that the Regulators do not establish any requirement to backload trades that have matured already. We believe that this approach represents an appropriate compromise between capturing a comprehensive picture of the market and limiting the burden on counterparties.

### **Proposed data set**<sup>29</sup>

We believe that the Regulators should consider the following comments in regards to the proposed data set to be reported to TRs:

#### **a) Master agreement date**

Whilst a requirement to report the Master Agreement Date had been considered also in some other jurisdictions, it was not required in any of the final regimes. We believe that this is mainly due to the fact that regulators in other jurisdictions recognized that it would be operationally very challenging to generate this data field while its reporting would add little value from a regulatory perspective.<sup>30</sup> We therefore recommend that the Regulators do not require the reporting of the Master Agreement Date in Malaysia.

#### **b) Counterparty identifier**

The CP proposes to accept “either the SWIFT Code or company registration number of the settlement agent” as a data input for the identification of counterparties. We recommend that the Regulators, instead, consider requiring the use of the internationally accepted standard for counterparty identification, the Legal Entity Identifier (LEI).

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<sup>28</sup> Consultation Paper, Par. 5.4.

<sup>29</sup> Consultation Paper, Annex 1.

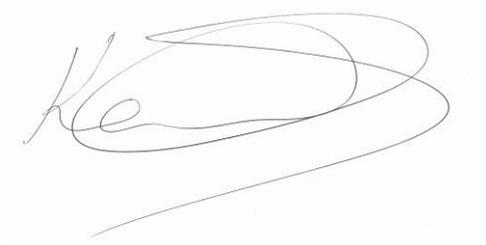
<sup>30</sup> ESMA Final Report: Draft technical standards under the Regulation (EU) No 648/2012 of the European Parliament and of the council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories. 27 September 2012.

However, if the Regulators decided to not require the use of LEIs they should at least include a clear waterfall of permissible party identifiers in the rules.

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Markit appreciates the opportunity to comment on the Regulators' Consultation Paper on the reporting of transactions in over-the-counter derivatives to 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 Marcus Schöler on [marcus.schueler@markit.com](mailto:marcus.schueler@markit.com).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Gould', with a large, stylized flourish extending to the right.

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