

Supervision of Markets Division
The Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Financial Stability Surveillance Division
Hong Kong Monetary Authority
55/F Two International Finance Centre
8 Finance Street, Central
Hong Kong

Submitted to fss@hkma.gov.hk and otcconsult@sfc.hk

Consultation paper on introducing mandatory clearing and expanding mandatory reporting – data fields

London, November 30th 2015

Dear Sirs,

We welcome the publication of the *Consultation paper on introducing mandatory clearing and expanding mandatory reporting* (the “**Consultation Paper**”) by the SFC and the HKMA (the “**Authorities**”) and we appreciate the opportunity to provide you with our comments on the data fields to be reported as set out in **Appendix D** of the Consultation Paper.

Introduction

Markit¹ is a leading global diversified provider of financial information services.² Founded in 2003, we employ over 4,000 people in 11 countries and our shares are listed on Nasdaq (ticker: MRKT). Markit has been actively and constructively engaged in the debate about regulatory reform in financial markets, including topics such as the implementation of the G20 commitments for OTC derivatives and the design of a regulatory regime for benchmarks. Over the past years, we have submitted more than 130 comment letters to regulatory authorities around the world and have participated in numerous roundtables.

Markit's derivatives processing platforms provide middleware services³ to participants in the global OTC derivatives markets and play an important role in supporting firms' compliance with several regulatory requirements including central clearing, confirmation and reporting. Specifically, the MarkitSERV platforms facilitate the electronic confirmation of a significant portion of OTC derivatives transactions, submit them for

¹ Please see www.markit.com for further details.

² We provide products and services that enhance transparency, reduce risk and improve operational efficiency of financial market activities. Our customers include banks, hedge funds, asset managers, central banks, regulators, auditors, fund administrators and insurance companies. By setting common standards and facilitating market participants' compliance with various regulatory requirements, many of Markit's services help level the playing field between small and large firms and herewith foster a competitive marketplace. For example, Markit's KYC Services provide a standardised end-to-end managed service that centralizes “Know Your Client” (KYC) data and process management.

³ In the trade workflow model prevalent in the OTC derivatives markets the MarkitSERV platforms provide “middleware” services that generally occur post-execution and pre-clearing.

clearing to 16 CCPs globally, and, for many counterparties,⁴ report their details to trade repositories (“**TRs**”) in the United States, Europe, Hong Kong, Japan, Singapore, Australia and Canada. 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 operational efficiency, reduce cost, and secure legal certainty. With globally over 1,500 firms using the various MarkitSERV platforms that process, on average, 80,000 OTC derivative transaction processing events per day our legal, operational, and technological infrastructure plays an important role in supporting the global OTC derivatives markets.

Comments

We welcome the publication of the Consultation Paper by the Authorities and we appreciate the opportunity to provide you with our comments in relation to reportable datafields, in addition to the comment letter that we submitted to the Authorities on October 31st 2015 in relation to the proposed mandatory clearing and reporting requirements.⁵

We appreciate that the Authorities, in the design of the clearing and reporting regime in Hong Kong, have endeavoured to broadly align their requirements with those that have been established in other jurisdictions. We believe that such approach provides numerous benefits, including reduced cost for globally active market participants whilst also allowing for a timely and smooth implementation of these requirements. We strongly encourage the Authorities to pursue this principle also in relation to the data fields that they require to be reported. Below we highlight areas where current proposals appear to deviate from international standards.

We also encourage the Authorities to keep in mind that Phase 2 entails an expansion of the reporting regime to “all OTC derivatives transactions” whilst maintaining the original “exempt person” relief.⁶ As this requirement will bring many smaller, erstwhile exempt entities, into scope we believe that it will be crucially important to simplify the datafields requirements to the extent possible. We also encourage the Authorities to avoid requiring the reporting of datafields that are difficult to source and/or add little value for regulators.

On this basis please find below our specific comments in relation to the data fields proposed in Appendix D. Specifically, we recommend that the Authorities: (a) align the format for the reporting of location information with internationally adopted ISO standards; (b) clarify the definition and scope of the Clearing exemption and special terms indicator data field, (c) harmonize their requirements around UTIs rather than requiring the reporting of local UTIs; (d) harmonise reference entity and reference obligation datafields with other regimes; (e) do not require the reporting of the Master Agreement Version and date; and (f) provide templates for the reporting of additional transaction details for exotic products.

Comments in relation to the data fields - Appendix D

Reference Branch of Trade Party and Desk ID

The Authorities’ proposals require the reporting of the Reference Branch of the Trade Party and Desk ID⁷ to be able to locate the branch or office “into which the transaction was booked” or the trading desk that was “responsible for the decision of entering into the transaction”.

⁴ Globally, we currently report transactions to TRs for over 100 firms and more than 1,000 entities, including most of the large, globally active dealers.

⁵ See <https://www.markit.com/Company/RegulatoryResponsesFile?CMSID=1a4f2dda1a864307b29fb48e30762748>

⁶ Despite the significant expansion of the derivatives reporting requirement to include all OTC derivatives under phase 2 the Authorities did not propose any change to the “exempt person” limit which would be maintained at US\$30 million. See para. 37(e). We believe that this threshold is too low and the Authorities should raise it to not impose unnecessary burden on smaller market participants.

⁷ In relation to “Information and particulars relating to the counterparties to the transaction”

We believe that, in this context, the Authorities should note that the internationally accepted standard for the reporting of the location is the ISO 3166-1 alpha-3 standard.⁸ To harmonise the reporting requirements in Hong Kong with other jurisdictions the Authorities should hence adopt this standard for the reporting of location.

The Authorities should further acknowledge the ongoing global debate about the creation of branch LEIs. Importantly, the creation of branch LEIs would make the reporting of a Reference Branch of the Trade Party redundant. We therefore recommend that the Authorities build sufficient flexibility into their reporting regime to allow them to seamlessly implement branch LEIs in the Hong Kong reporting regime as and when a global standard on branch LEIs emerges.

Special terms

The Authorities proposed requiring the reporting of a “Special terms Indicator”.⁹

However, it is not clear which special terms of a transaction would be relevant when determining whether a “transaction is subject to the clearing mandate”. We therefore encourage the Authorities to provide more specific examples to outline their expectations in relation to the reporting of this field.¹⁰

UTIs

The Authorities proposed mandating the reporting of a UTI-TID “if a unique Trade ID (TID) reportable under the mandatory reporting requirements in the European Union exists for the trade”.¹¹

The Authorities should note that, although we will use the EMIR UTI consistently across all versions of a transaction in our reporting to TRs (and the UTI is hence EMIR compliant), this does not necessarily mean that the transaction is actually reported in the EU. The Authorities should also be aware of the fact that recent changes to ESMA Level 2 proposals imply that our ESMA UTI might no longer be the same as the HKMA UTI for all transactions. We therefore recommend the Authorities harmonise their requirements around a global UTI rather than requiring the identifiers used in each foreign regime to be reported HKMA separately.¹²

Proposed data fields for credit

For credit derivatives, the Authorities proposed the reporting of Reference Entity and Reference Obligation.¹³ Specific details the Authorities proposed in this section include the ID Type, the Entity ID and Entity Name for reporting Reference Entity information as well as the Asset Type, ID Type, Instrument ID and Place of incorporation for Reference Obligation.¹⁴

Given the Authorities’ desire to harmonise the reporting regime in Hong Kong with those that have already been established in other jurisdictions we recommend that they require the reporting of Reference Entity name, ID and Reference obligation instead.¹⁵ Such approach would facilitate implementation, in particular for internationally active firms. However, should the Authorities persist with the proposed requirements they should clarify what exactly firms need to report in the subfields of both Reference entity and Reference obligation, ideally with the help of templates.

⁸ See, for example, the SEC’s reporting requirements.

⁹ See Pg. 125 under “Information and particulars relating to the clearing of the transaction”

¹⁰ For example, would it be limited to specific, enumerated situations or would it capture any transaction that is non-standard?

¹¹ See Pg. 125 & 126 under “Particulars of any identifying references assigned to the transaction”

¹² Otherwise the number of reportable UTIs might grow further if they are introduced to additional foreign regimes.

¹³ See Pg. 157, “Information and particulars relating to pricing of the transaction”

¹⁴ See Pg. 158, Information and particulars relating to pricing of the transaction

¹⁵ SEC reporting requirements are limited to the 3 fields mentioned.

Master agreement version and date

The Authorities proposed requiring the reporting of Master Agreement Version and Date.¹⁶

We encourage the Authorities to further analyse whether there is sufficient justification to require the reporting of these datafields. Specifically, while the Master agreement type is more readily available and somewhat useful information our experience has shown that firms need to apply a significant effort to generate information about the Master agreement version and date from their internal systems. At the same time, neither of these data fields is particularly useful from a regulatory perspective, nor does it uniquely define the contents of the master.¹⁷ We therefore recommend that the Authorities do not require the reporting of Master agreement version and date.

Reporting of structured products

The Authorities highlighted that “the HKTR templates have been enhanced to include extra fields to cater for transactions in exotic or highly complex products.” They further state that, “where these extra fields do not suffice, any remaining transaction details should be submitted using a pdf file”.¹⁸ The requirement to report these extra fields would apply to exotic products across all asset classes.

The Authorities should be aware that this requirement would be problematic to comply with in practice. Specifically, in addition to the operational challenges that the reporting of pdf files will create, there are no existing standards that define “any remaining transaction details”. It is therefore likely that, for the same type of transaction or product type, different firms would report different fields to the Authorities. To allay these concerns we recommend the Authorities provide examples of what they believe constitutes transaction details for exotic products using templates.

We hope that our above comments are helpful to the Authorities. We would be more than happy to elaborate or further discuss any of the points addressed above in more detail. In the event you may have any questions, please do not hesitate to contact us.

Yours sincerely,



Marcus Schuler
Head of Regulatory Affairs
Markit
marcus.schueler@markit.com

¹⁶ Para 181 (7) states that among “proposed categories of transaction information” “Information and particulars relating to the documentation of the transaction, including the version, type and date of any master agreement executed and the type and date of any supplementary materials” would be required.

¹⁷ For example, the Master Agreement version will only refer to the overall template, e.g., 1992, 1998, or 2002, while each individual Master Agreement can contain bespoke elements.

¹⁸ Para 184, Pg. 55.