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15 June 2012

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

Submitted to: financialmarkets@treasury.gov.au

Re: **Implementation of a framework for Australia's G20 over-the-counter derivatives commitments**

Dear Sir/Madam:

Markit[1] is pleased to submit the following comments to the Treasury in response to its Consultation Paper on *Implementation of a framework for Australia's G20 over-the-counter derivatives commitments* (the "***Consultation Paper***" or "***CP***").

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.

In Australia, Markit has had a local presence in Sydney since 2007 and we have provided data and valuations services to local market participants for many years. All major local dealers contribute to some of our derivative-related services that provide OTC derivatives market makers with consensus-based valuations.[2] Many local market participants also use our credit and reference data to monitor daily risk, to support the marking-to-market of their positions and to develop accurate forecasting services.

Markit has been actively and constructively engaged in the debate about regulatory reform of the global OTC derivatives markets and the implementation of the Pittsburgh G20 commitments.[3] Over the last 18 months we have submitted 29 comment letters to regulatory authorities around the world, we have participated in numerous roundtables and we regularly provide the relevant authorities with our insights on current market practice, for example in relation to valuation methodologies, the provision of scenario analysis, or the use of reliable and secure means to provide daily marks. We have also advised regulatory authorities on appropriate approaches to enabling a 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.

[1] Markit is a financial information services company with over 2,400 employees in Europe, North America, 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 for additional information.
[2] The service encompasses the equity, interest rates, currency, commodity, credit, property and bond markets, providing matrices of vanilla prices and a wide selection of exotic products.
[3] "Leaders' Statement: The Pittsburgh Summit" (Sept. 24-25, 2009), available at http://www.g20.org/pub_communiques.aspx.

We welcome the Treasury's Consultation Paper regarding the implementation of possible regulatory reforms for the Australian OTC derivatives market and we appreciate the opportunity to comment on the Treasury's proposed requirements. Please find below our comments on a) considerations in relation to any mandatory execution determination, b) access to and use of the data that is stored in Trade Repositories ("***TRs***") and c) issues to consider in relation to post-trade transparency.

Comments

22. If a derivative class is prescribed for mandated use of CCPs should it also be mandated for execution on a trading platform?

We generally do not have a view on whether it would be appropriate to introduce a mandatory trading requirement in the Australian OTC derivatives markets. However, if the Treasury decided to introduce such a requirement in Australia, we believe it should take the following considerations into account when determining whether a specific OTC derivative product must be traded.

- The trading determination is fundamentally different from the clearing determination

As an initial matter, we believe that the factors that should be the basis for the clearing and trading determinations differ in several material respects. Specifically while liquidity is only one of several factors that matters as part of the mandatory clearing factors, the trading-related factors all tend to relate to the liquidity of a given OTC derivative product. Experience has shown that OTC derivative transactions with even a limited amount of liquidity could be successfully centrally cleared without causing any disruption to the market. In contrast, a mandate to trade certain less liquid products on a specific type of trading platform could effectively kill liquidity in those instruments and hence disrupt market functioning. Any trading determinations must therefore be distinct from the mandatory clearing determinations because they will have different effects on the market and will necessarily require different types of considerations. Such approach has also been taken by regulatory authorities in other jurisdictions.[4]

- Any trading determination needs to be sufficiently granular

We believe that the trading determination will also require a different level of granularity compared to the clearing determination. While differing tenors of a given OTC derivatives trade will likely be able to be cleared if any tenor of that OTC derivative trade is cleared, experience shows that differing tenors of a given OTC derivative product often have significantly different levels of liquidity. As a result, we believe that any trading determination should be performed at s sufficiently granular level to reflect differences in liquidity between variations of a given OTC derivative product. In order to reduce the time and effort required to approve any potential trading determinations they should be made for clearly-defined categories of OTC derivative products, for example ranges of tenors that have similar liquidity characteristics.

- Any trading determination must be reviewed on a regular basis, and shall be made centrally by the relevant authority

Measuring the liquidity of products that trade mainly over-the-counter is complicated but can be achieved by taking a range of factors into account.[5] When making any trading determination based on measuring product liquidity, the Treasury should also take into account that liquidity evolves and can change significantly over time. Such determinations should therefore be reviewed on a regular basis and provide the option for also de-applying the trading determination where appropriate.[6] Importantly, regardless of the

[4] Securities and Exchange Commission: Statement of General Policy on the Sequencing of the Compliance Dates for final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act. (June 11, 2012).
[5] Please find further details in relation to liquidity measurement in our below answer to Question 25.4
[6] Specifically, we believe that these reviews should analyze a series of objective criteria including, but not limited to, whether: (i) the number of market makers has diminished; (ii) bid/offer spreads have widened significantly; (iii) the frequency with which the OTC

frequency of these reviews or the process utilized for making them, any such determinations must be made by the Treasury (or a regulatory authority it has delegated this task to), not the individual execution venues.[7]

Questions 25.2, 28, and 29: What restrictions should there be on the use of reported data by trade repositories? Should any requirements be imposed on trade repositories with respect to obligations to provide third parties with access to the information (subject to authorisation from data providers and regulators)? Do you have any initial views on the property rights in trade information passed to trade repositories?

We believe that the Treasury should take the following considerations into account when making determinations in respect to the ownership of and access to the data that has been reported to a TR:

- The main task of TRs is to receive, store, and make available accurate data of OTC derivatives transactions and/or positions. TRs should not be conflicted by aiming to monetize the data that they receive and they should only be permitted to do so if they received the permission from the reporting parties.
- TRs need to generate revenues to enable them to perform their services. They should therefore be permitted to charge the reporting parties on a fair and not unreasonable basis. They should also be allowed to offer commercial services in relation to data that they have made publicly available.[8]
- Counterparties that report transaction data to the TR should be able to access the data that they have reported without any unreasonable restrictions being imposed on them.
- The transaction data that is stored by TRs is often needed as input into post-trade processing activities and data-related services. TRs should therefore be required to provide open, non-discriminatory access to third party service providers of ancillary services such as multilateral compression or data services.[9] However, third-party access to the TR data should be subject to the permissions of the reporting party.

Such approach seems consistent with the one that has been used in other major jurisdictions.[10]

25.4 Should the prices and sizes of individual transactions reported to trade repositories be made publicly available? If so, do you have any views on the time frame in which the information should become publicly available? Should there be different time periods for public release of transaction data depending on the size of particular transactions?

We do not have a view on whether the details of individual OTC derivatives transactions in Australia should be publicly reported and what the applicable time delays should be. However, we believe that, in this context, the Treasury should take the following considerations in relation to data fragmentation and the calibration of any post-trade transparency regime into account.

- Avoid unnecessary data fragmentation

Data fragmentation will occur if transactions are stored and/or disseminated by various entities and cannot be easily consolidated. Such fragmentation can significantly reduce the usefulness of post-trade transparency, up to a point where it is not meaningful at all. We therefore believe that, to avoid such harmful

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derivative transactions are entered into has been reduced; (iv) the average size of the OTC derivative transactions has changed; and (v) the number of execution venues with an active two-sided market in the instrument has changed.

[7] The latter has been discussed in other jurisdictions. However, we believe that only the Treasury will have the necessary access to market-wide data on activity in the relevant products, and it would likely create a significant amount of market confusion if one execution facility determines that a given product should not be subject to a trading requirements while another execution facility determines it should be subject to a trading requirement based on their respective views on liquidity of a category of OTC derivatives transactions.

[8] This would be in line with the approach taken in the United States. Real-Time Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012).

[9] Such services can be valuable to the reporting parties or could also provide transparency and data to the Treasury or other relevant regulatory authorities.

[10] Swap Data Repositories, 76 Fed. Reg. 54538 (September 1, 2011).

data fragmentation, any public dissemination of post-trade data should be performed by TRs. Importantly, as TRs might not be set up to perform this role themselves, they should be permitted to outsource this function to third parties.[11] The Treasury should note that such approach seems to be consistent with other jurisdictions.

- Appropriate calibration of any post-trade transparency regime

We believe that an appropriate calibration is needed for any post-trade transparency regime in order to avoid damaging market liquidity. Such calibration would result in the setting of sufficient time delays for dissemination and block trade sizes, and should be closely tied to the liquidity of a given product. Such principles have been taken into consideration in other jurisdictions and we recommend the Treasury review this issue as well.[12]

While establishing objective liquidity measurements for products that trade mainly over-the-counter can be challenging, our experience[13] has shown that they can be derived from a combination of observable factors. These factors include, but are not limited to, trade frequency, average transaction size, bid/offer spread and the number of market makers. In this context the Treasury should also consider that the liquidity of a given OTC derivative product or even the entire OTC derivative market in certain circumstances can vary widely over time. As a result an OTC derivative product that trades actively today might turn illiquid in the future, and vice versa.[14] Any calibration should therefore be reviewed on a regular basis.

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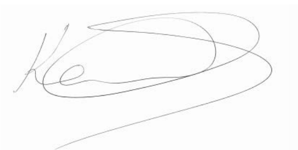
Markit appreciates the opportunity to comment on the Treasury's Consultation Paper on *Implementation of a framework for Australia's G20 over-the-counter derivatives commitments*. We would be happy to elaborate or further discuss any of the points addressed above. In the event you may have any questions, please do not hesitate to contact the undersigned or Marcus Schüler at marcus.schueler@markit.com.

Yours sincerely



Kevin Gould
President
Markit North America, Inc.

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[11] Real-Time Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012). Dissemination to be performed solely via SDRs. SDRs can charge reporting parties for their dissemination services.

[12] The CFTC block trade rule allows OTC derivatives transactions that are of a specific "block size" or larger do not need to be traded on a SEF/DCM and their post trade dissemination is delayed.

[13] Markit provides liquidity measures, based on a number of relevant inputs, for a variety of OTC derivatives, bonds, loans, and structured finance instruments.

[14] Examples include a benchmark 10 year interest rate derivative transaction (benchmark) after it turned into a 9 year and 11 month derivative transaction (off-the-run) 1 months later, or an on-the-run CDX credit index that will become 6 months after its launch.