

21 September 2012

John Stevenson, Secretary
Ontario Securities Commission
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Me Anne-Marie Beaudoin, Corporate Secretary
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Submitted via: jstevenson@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

Re: **Derivatives: OTC Central Counterparty Clearing**

Dear Sir/Madam:

MarkitSERV¹ is pleased to submit the following comments to the Canadian Securities Administrators (“**CSAs**”) in response to their Consultation Paper *Derivatives: OTC Central Counterparty Clearing* (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 25,000 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 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 in 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.

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. In 2011, over 20 million OTC derivative transaction processing events were processed using MarkitSERV. Please see www.markitserv.com for additional information.

² Canadian Securities Administrators, “CSA Consultation Paper 91-406 – Derivatives: OTC Central Counterparty Clearing” (June 20, 2012).

By integrating electronic allocation, trade confirmation and portfolio reconciliation, MarkitSERV provides a single gateway for the processing of OTC derivatives transactions. Based on our experience as provider of connectivity and processing services, we have been actively and constructively engaged in the debate about regulatory reform of the global OTC derivatives markets and the implementation of the Pittsburgh 20 commitments.³ Over the last 18 months we have submitted over 23 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 the electronic confirmation of OTC derivatives transactions, efficient ways of reporting them to Trade Repositories (“**TRs**”), and the reconciliation of existing portfolios of such transactions. 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 and by providing participants with a choice of means for satisfying regulatory requirements.

Comments

We welcome the publication of the CSAs’ Consultation Paper and we appreciate the opportunity to provide you with our comments. Specifically, we believe that the CSAs should (a) consider several issues in relation to the timeframes given for clearing a transaction, and (b) require CCPs to provide fair and open access not only to trading venues but also to relevant third party service providers.

1. Clearing Timeframes

The CSAs propose to require Canadian “counterparties, (or the trading venue on behalf of the counterparties)” to submit derivative transactions that are subject to a clearing obligation to a recognized CCP “as soon as possible, in any case no later than the close of business on the day of execution.”⁴ This process would “preferably be fully automated, with integration between the trading venues and the CCPs’ systems.”⁵ We believe that the CSAs should consider several issues in relation to this requirement and consider making some changes to it.

First, requiring counterparties to submit their transactions for clearing “as soon as possible” following execution raises challenges related to clearing certainty. This is because, in today’s world, one might enter into a transaction based on the assumption that it will be centrally cleared, however it might not be cleared successfully if the necessary credit line was not available. Therefore, to support clearing timeliness requirements in the future, infrastructure will need to be established to provide the necessary level of clearing certainty at the time of execution, for example by performing pre-trade credit checks. Based on our discussions with the relevant stakeholders, we believe that the use of a central credit hub will be the most effective way to address this issue. Such credit hub would serve to confirm that the potential transaction fits within the CCP’s product scope and that sufficient credit line is available for it from the FCM and/or the CCP. MarkitSERV is in the process of building infrastructure that would perform these services with a phased launch to commence by the end of this year. We would be happy to discuss this initiative with the CSAs in further detail.

Second, transactions may be executed when the relevant CCP is already closed for the day, making it impossible for counterparties to meet the proposed requirement. We therefore suggest that the CSAs either

³ “Leaders’ Statement: The Pittsburgh Summit” (Sept. 24-25, 2009), available at http://www.g20.org/pub_communiques.aspx.

⁴ Section 5.1 Committee Recommendations, CSA Consultation Paper.

⁵ Section 5.1 Committee Recommendations, CSA Consultation Paper.

use time periods⁶ or take guidance from the CFTC that established a modified definition of “Business Day” in some of its rules.⁷ Such definition is designed to accommodate transactions that happen late in the day and/or where counterparties are based in different time zones.⁸

Finally, the “submission to clearing” requirement should recognize the operational infrastructure that has evolved in the global derivatives markets, specifically the existence of Third-Party “Middleware” Providers (“**TPMPs**”). TPMPs, such as MarkitSERV, provide universal, timely, and secure connectivity between the numerous counterparties, execution venues and CCPs as well as Trade Repositories and other post-trade service providers. Derivative transactions are communicated to such TPMPs either directly by the counterparties to a bilaterally executed trade, by electronic trading platforms on which the transaction is executed, or by the interdealer broker who arranged the transaction. TPMPs not only route trades to CCPs, TRs, and other post-trade service providers, but also provide trade counterparties with notifications as to the transaction’s status (e.g., whether it has been received, registered, or rejected by the CCP), which is important for the counterparties’ risk management. Where applicable, TPMPs will also provide trade enrichment, matching or affirmation of all the terms of the transaction, as well as allocation and legal attachment. We therefore recommend that the CSAs change their language regarding the integration between the trading venues and CCPs’ system⁹ to reflect the role of TPMPs. Specifically, they should allow for the “integration” between the trading venues and the CCPs’ systems to be achieved by the use of third party service providers such as TPMPs.

2. Open Access to Trading Platforms

We agree that CCPs¹⁰ should be required to establish policies that will facilitate fair and open access regardless of the venue on which the transaction has been executed.¹¹ This is because a requirement for CCPs to provide non-discriminatory access to other infrastructures will foster competition in the OTC derivatives marketplace which is ultimately to the benefit of all market participants. It would also be consistent with CPSS-IOSCO’s Principles for Financial Market Infrastructures (“**FMI**s”)¹² that state FMIs should have objective, risk-based and publicly disclosed criteria for participation that permit fair and open access.¹³ The Principles also specify that an FMI should allow for fair and open access to its services, including by direct and indirect participants and other FMIs.

The CSAs reference the CFTC proposed requirements for processing, clearing and transfer of customer positions that highlight the issue of connectivity between the CCPs and trading venues.¹⁴ We agree that to ensure the proper flow of data between these multiple venues, the effective establishment of robust

⁶ E.g., “within 8 business hours”.

⁷ Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 Fed. Reg. 55904 (Sept. 11, 2012).

⁸ Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 Fed. Reg. 55961 (Sept. 11, 2012).

⁹ “If a derivative is subject to a clearing obligation is traded on a recognized trading venue, the counterparties (or the trading venue acting on behalf of the counterparties) must submit the trade as soon as possible. This process would preferably be fully automated, with integration between the trading venues and the CCPs’ systems.” Section 5.1 Committee Recommendations, CSA Consultation Paper.

¹⁰ In Response to Question 8, “The Committee seeks public comment on the relevance of developing rules allowing for access to CCPs regardless of trading venue. Is this of concern in the Canadian marketplace at this time or in the future?”

¹¹ “The Committee proposes that regulations be adopted that require CCPs develop access policies that facilitate fair and open access and which do not unreasonably prohibit or limit access to its services regardless of how the derivatives transaction is executed.” Section 8.13 Committee Recommendations CSA Consultation Paper 91-406.

¹² CPSS-IOSCO: Principles for Financial Market Infrastructures (April 2012).

¹³ CPSS-IOSCO Principle 18.

¹⁴ “The Commission also recognizes that there may be issues of connectivity between and among trading platforms and clearinghouses.” Derivatives Clearing Organization General Provisions and Core Principles. 76 Fed. Reg. 69334. (Nov. 8, 2011).

connectivity between them is absolutely essential. The CSAs should note that, as described above, an operational infrastructure has therefore evolved where specialized middleware providers such as MarkitSERV establish and maintain universal, timely and secure connectivity between execution venues, clearing venues and other post-trade service providers.¹⁵ Given the role that providers of middleware play in providing agnostic connectivity to support a range of parties, we believe that the CSAs should require CCPs not only to provide fair and open access to execution venues themselves but equally to independent third-party providers that provide connectivity services to market participants.

Further, eligible facilities should be prevented from imposing an unnecessary restraint on competition by bundling their service offerings. The CSAs should therefore consider establishing a specific prohibition on Trade Repositories from bundling their TR services with other services, which is an approach that has been followed in other jurisdictions.¹⁶ We believe that the same approach should also apply to clearing and execution platforms, specifically, they should not be allowed to bundle their clearing and execution services, respectively, with other services.

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MarkitSERV appreciates the opportunity to comment on the CSA's Consultation Paper, "Derivatives: OTC Central Counterparty Clearing". 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

¹⁵ MarkitSERV, for example, has established and maintains today connectivity with 9 central clearinghouses, more than 75 trading venues (including interdealer brokers), and more than 2,500 counterparties.

¹⁶ "A TR should not engage in anti-competitive practices such as product or service tying, setting overly restrictive terms of use, or anti-competitive price discrimination. A TR also should not develop closed, proprietary interfaces that result in vendor lock-in or barriers to entry with respect to competing service providers that rely on the data maintained by the TR." Principle 18: CPSS-IOSCO: Principles for Financial Market Infrastructures (April 2012).