

REGIS-TR congratulates the Canadian Securities Administrators for the very accurate summary of requirements in the framework of establishing, running and using a Trade Repository for OTC Derivatives and appreciates the opportunity to comment on the CSA Consultation Paper 91-402 – Derivatives: Trade Repositories.

REGIS-TR, being a fully operational Trade Repository for Interest Rate Derivatives with an international customer base and having a firm and committed intention to capture position details in all reportable OTC derivative product classes before the G20 deadline, is highly interested in providing its expertise and experience to the Canadian Regulators to support the establishment of the most appropriate environment for a Canadian Trade Repository for OTC Derivatives.

Highlights and specific comments to individual aspects of the Consultation Paper 91-402:

1. Trade Repository Requirements

REGIS-TR shares the majority of the conceptual aspects and described requirements for TRs and complies to this majority already today. These are absolutely fundamental elements for the definition of a trade repository and appropriate for the Canadian Securities Administrator's goal of reducing the market risks and increasing the transparency of this market segment. The described principles follow those being equally promoted by other regulatory bodies and international industry institutions such as CPSS-IOSCO. Yet, REGIS-TR would like to comment on a number of considerations and share its view on these elements.

1 d) Trade repositories should have robust operational risk management capabilities including back-up systems that can resume operations within two hours of any disruption.

As financial and operational stability, transparency and system reliability are core principles of this regulatory initiative, this point cannot be stressed enough.

System availability (defined as the probability that the system is operational according to its specification at a given point in time; therefore, the expected percentage of time that the system is available to perform functions as intended) and operational availability (defined as the specified time during which the participants and users of the system are able to access it for their operational processes) should be defined considering the performance of stock exchanges as well as securities settlement systems as a benchmark for the TR's performance. This is to be equally taken into account for the aspects of business continuity and operational risk management procedures. The stability and redundancy of systems should represent an essential part of the selection process of a TR provider for the Canadian market.

1 e) Trade repositories should provide fair and open access to market participants and be required to accept all trades for each asset class for which the trade repository accepts data.

The regulation foresees the applicability to any Canadian market participant who is the counterparty to an OTC derivatives transaction. Therefore, this aspect is particularly relevant in relation to medium and small financial, as well as corporate, participants in general. The Canadian Securities Administrators must take into account that depending on size and on the resources available to the respective participants, the upcoming regulatory clearing and reporting requirements will be demanding. Thus, fair and open access must be granted to every market participant at a reasonable cost and based on basic industry standards.

2. Reporting Requirements

a) Transactions Required to be Reported

ii) Pre-existing OTC derivative transactions should be reported to an approved trade repository within 180 days from the effective date of the new reporting rules. Pre-existing transactions terminating or expiring within one year of the effective date of the new reporting rules should be exempted from reporting requirements.

Regulators across the globe are seeking greater insight into the current OTC derivatives market and a number of existing trade repositories are supporting them in doing so already today, amongst others, REGIS-TR. In this respect and considering the selection of an existing TR as a service provider also for the Canadian market, we firmly believe that such a grace period will not be required. Canadian Securities Administrators and other regulatory bodies and authorities will require the most accurate view of the market activities and existing exposures in the Canadian market. This is only possible as soon as all pre-existing transactions are entered into the TR system. An inclusion of all pre-existing transactions into a TR on the date of implementation of the Canadian OTC derivatives regulation can be ensured by liaising with existing TRs providers, to guarantee that Canadian Authorities expectations will be met and served on time. This should have no downside for the market participants, if a selection is being considered to take place before the end of Q1 2012.

b) Reporting Obligations

i) One counterparty to each OTC derivative transaction should be required to report the transaction and any related post execution events to an approved trade repository.

REGIS-TR firmly believes that only by having both parties accessing and converging in a Trade Repository the quality of the recorded information can be guaranteed. Unilateral reporting alone can lead to inaccuracies in the information and does not provide an auditing tool for the authorities. This is why REGIS-TR has always supported double-sided reporting, which when implemented in a flexible way, does not imply additional costs or burdens for the industry. Double-sided reporting has additional benefits for the

participants such as the electronic matching and confirmation which will, in many cases, reduce operational costs and risks for market participants.

Additionally, having double-sided reporting will harmonise processes for all participants and all counterparties: all the entities will follow the same procedures independent of who is their counterparty or what type of contract they are trading.

The way in which this double-sided reporting can be reached without increasing costs to the participants, is by providing flexible access profiles that can adapt to the different activity volumes or degree of automation. Thus, double-sided reporting can be reached by means of enabling participants to outsource their connectivity to another participant or to a third-party service provider, or by providing affirmation tools in replacement of having to enter transaction details into the system, as well as by maximizing the capability of the TR to receive already matched records from other electronic platforms

This view is in line with the Outline for Trade Repositories published by the OTC Derivatives Regulators Forum¹ in which the importance to have authoritative (matched) records in the Trade Repository in order to ensure the quality of the information is clearly expressed:

"A TR should maximise the number of individual and authoritative transaction records stored as paired trade sides"

Similar requirements are being set forth for the European market regulations²:

"Financial counterparties and non-financial counterparties (...) that enter into an OTC derivative contract not cleared by a CCP, shall ensure that appropriate procedures and arrangements are in place to measure, monitor and mitigate operational and credit risk, including at least:

*(a) (...) the timely confirmation of the terms of the OTC derivative contract. Where available, the confirmation should be **made via electronic means**"*

Confirmation of the trades through electronic means will ensure robustness and reliability of the data provided, thanks to double-sided trade acceptance and confirmation of the information.

REGIS-TR supports the use of third parties as a means for reporting trade data to TRs. These will strengthen the ability of the TR to fulfill its statutory obligation to confirm the data with both parties. In many cases, the third party will report trade information on behalf of both parties, and, in the absence of an obligation for parties to confirm the

¹ See <http://www.otcdrf.org/documents/traderepositoryfunctionalityoutline.pdf>

² See article 6 of the current European Council version of the Regulation on Central Counterparties and Trade Repositories (EMIR)

data with the TR, reduce the regulatory burden of the counterparties ensuring prompt compliance with reporting obligations.

Nevertheless, a large percentage of trades are today not confirmed by electronic means. Regularly, when a trade is not electronically confirmed, it is simply rendered as a text-based document and issued either by fax or by emailing as PDF copy of the agreement. REGIS-TR considers it a natural development to use centralised trade repository facilities as an electronic confirmation tool, replacing the physical exchange and signature of the contracts. This would, on the one hand, alleviate some of the back-office burdens of the counterparties and, on the other hand, it would also guarantee the accuracy of the information stored in the trade repositories, which next to positive effects such as automation, can lead to greater operational efficiency and reduced risks. In this sense, REGIS-TR is also promoting and supporting that future regulations take into account the benefits that the provision of additional legal value to contracts that are fully matched and registered in trade repositories would bring to the whole of the industry.

ii) Transaction reporting obligations should be determined based on counterparty type, and delegation of reporting to a third-party service provider including a central counterparty clearing house should be permitted. Financial intermediaries should bear the reporting onus in transactions with end users. Transaction counterparties should be permitted to elect the reporting party for transactions between two financial intermediaries or two end users. A foreign counterparty may assume reporting obligations provided that the transaction is reported to a trade repository approved in Canada.

As it has been mentioned in the previous commentary, and although REGIS-TR is capable of receiving single-sided reporting, we support double-sided reporting as the only way to ensure the quality of the records. We firmly believe in the role of Trade Repositories as not being limited to that of a data warehouse, but also as becoming the official registries that provide and guarantee the veracity and accuracy of the positions registered.

Given the complexity related to establishing a new regulatory framework in a global market, ruled under different regulations, there is considerable complexity to devising rules that determine a reporting obligation within a hierarchy based on a counterparty status. If reporting is required by only one party, counterparty agreements would be needed on a recurring basis for every new trading party. This represents another source of error which could lead to double-counting or to missed-reporting. In our opinion, having both parties reporting will ensure that all records can be confirmed in the system, providing the supervisors with authoritative records and, on the other hand, simplifying the reporting obligation definition, as no differentiation between dealers, major participants and other participants is required. Additionally, if reporting is typically delimited to financial intermediaries, non-financial counterparties could find a

barrier in ensuring regulatory compliance in several situations. Access to the TR could be required in specific situations as, for instance, when both counterparties are non-financial or for those trades between a non-financial institution not connected to any TR and a foreign dealer without access to the Canadian TR. An easy and economical access for every market participant, regardless of their characteristics, should be granted.

Additionally, REGIS-TR fully supports the possibility of delegation of reporting to third-party service providers as it increases the flexibility and diversifies the choice for the market participants, particularly as the technical investment necessary to ensure regulatory compliance is estimated to be relevant. Being able to outsource the communication to a trade repository is likely to reduce initial project and ongoing running costs to the industry players.

c) Reporting to Approved Trade Repository

ii) Any trade repository that intends to carry on business in one or more Canadian province should be approved by the applicable provincial market regulator through a recognition or designation process.

REGIS-TR recommends one sole application process for TRs for the entire Canadian territory. Other approaches could result in regulatory arbitrage and the requirement for TRs to comply with different rulemakings and regimes of several authorities. This would, in practice, be very challenging for regulated entities and could significantly raise the costs for all involved parties.

In the case of foreign TRs, it may be preferable to contemplate a regime where such a foreign TRs can be officially registered in Canada, if the laws and regulations in the jurisdiction under which the foreign TR is regulated are equivalent to the Canadian ones and if a Memorandum of Understanding (MoU) between the Canadian monetary authority and the relevant foreign supervisory authorities has been signed. This approach has been equally supported by ESMA and CFTC.

d) Mandating a Canadian Trade Repository

i) Mandating the use of a Canadian-based (or domiciled) trade repository by Canadian OTC derivative transaction counterparties should be studied. The Committee will investigate the feasibility of adopting a mandate and options for developing a Canadian trade repository.

It is clearly not the understanding of the financial supervisors to push for any monopolistic solution. Both US and EU regulations are promoting trade repositories acting in level playing field competition. Therefore, we expect several types of trade

repositories acting in different market spaces, and freely competing based on their core services but also on their added value services which are ancillary to the basic trade repository.

In this sense, REGIS-TR supports this view as competition is the best way to provide Canadian market participants with a good coverage of trade repository services at a competitive price.

Nonetheless, if finally the decision is taken to designate one single foreign TR for the entire Canadian territory, REGIS-TR is in the position of providing such service as a global TR service provider directly to the market or as a provider of TR services to a local infrastructure selected to offer this services within the Canadian jurisdiction.

ii) Reporting to a foreign-based trade repository that has been approved by provincial market regulators and meets all the requirements applicable to a Canadian trade repository should be acceptable until a Canadian trade repository is operational or if the mandating of such a repository is rejected by market regulators.

The service scope and service level of a selected TR, as well as the flexibility of its offering, are the most relevant aspects to be considered in the mandating process, next to the robustness and security of its infrastructure. Due to the global scope of the industry, it could be financially preferable to consider mandating an internationally active TR for the sake of integration of the Canadian activities in a global and interconnected infrastructure. On the other hand, concerns over data access are seen as a relatively low hurdle, as regulatory agreements already envisaged these situations and are developing the relevant laws. For that reason, REGIS-TR supports the establishment of a Canadian based TR being provided with technical and operational services by an internationally active TR. REGIS-TR calls such a structure "white-labelling of TR Services" and is willing and capable of providing such Services to the Canadian Regulators and Authorities. The solution of a foreign TR provider could equally be used as an interim solution if Canadian regulators find it necessary to develop their own infrastructure. REGIS-TR would be happy to provide and share its experience and expertise in such a development process.

e) Information Required to be Reported

iii) Initial transaction data including the principle economic terms and the full executed legal agreement entered into between the counterparties should be reported for all OTC derivative transactions.

iv) Continuation data should be reported throughout life of an OTC derivative transaction including valuation data and snapshot or lifecycle data depending on the class of OTC derivative.

It is REGIS-TR's conviction that the lifecycle event approach for the registration process is the only possible way to efficiently comply with the Trade Repository requirements as defined by the CFTC and as outlined by the Regulation of the European Commission.

We believe that having all the databases overridden once or several times a day is incompatible with the CFTC's close-to-real-time registration requirements. Besides, the registered data might have already been matched and confirmed. A snapshot approach would imply full re-matching of all the databases in order for authoritative records to be maintained.

REGIS-TR supports a model in which, further to the submission of the primary details, the participants can choose to additionally submit the "confirmation details" or the legal agreement of the contract by electronic means, for the acceptance of the counterparty by the same means. The legal agreement could be stored in the TR after the acceptance providing legal certainty to the parties as well as electronic archive keeping custody of the contract during its life and after termination.

f) Availability of Information to Regulators

ii) A data aggregator should be developed to assist Canadian regulators and the central bank in the collection and aggregation of trade data from multiple trade repositories (located domestically or internationally) if a Canadian trade repository with aggregation functionality is not developed.

This data aggregator could be developed, directly by the Canadian authorities or could be entrusted to one of the TRs providing services in the jurisdiction. Should the later be the case, REGIS-TR is willing to develop such an aggregation service under the specificities presented by the regulators.

Additionally, the regulators could demand from TRs certain compression and evaluation activities prior to the sending of data packages. This would facilitate the information extraction from the vast data files. According to this, REGIS-TR recommends following the mechanisms and methodology of aggregation of data that CPSS-IOSCO proposes. It supports two general methods of data aggregation: legal entity and product aggregation. The content of the output would be elaborated based on the type of data it covers (e.g., transactional or positional), the classification of the data (e.g., maturities, optionality), or other relevant criteria.

The tools proposed for data aggregation are the creation of LEIs (Legal Entity Identifiers) and a product classification system. A third tool that could aid data aggregation by authorities would be a Unique Trade Identifier, created at the time an

OTC derivative transaction is executed. This would ease the process of tracking the life of a contract (with all the events affecting it) thorough its existence. Last, but not least, a unique trade identifier will help to avoid double-counting a trade reported by two different TRs. Nonetheless, the creation of these trade identifiers is a big challenge for the OTC market

h) Timing of Reporting

i) Transaction reporting to trade repositories should be done in real time once feasible for Canadian market participants and within one business day until real time reporting is implemented.

Real-time reporting will have significant cost implications to market participants. While it could benefit transparency, it could equally dramatically affect the liquidity of the traded products and anonymity for market participants, in addition to the costs of compliance with such real-time requirements to all market participants. Conceptually, the interest of regulators in real-time information is clear and understandable; in reality, such need is of secondary priority. In the view of REGIS-TR, the aspect of greater priority is being able to access and evaluate relevant data. This is also ensured with near-time reporting of less than 10 minutes – a time-delay which would significantly reduce costs to all participants compared to real-time reporting.

On the other hand, it may be difficult for reporting parties to provide TRs with data faster than the submission process for trade confirmation. Any regulatory reporting prior to trade confirmation with the counterparty is likely to result in inaccurate information.

3. Access to Confidential Trade Repository Information

c) Canadian regulators and the central bank should establish cooperation agreements with foreign jurisdictions that have equivalent legal and supervisory frameworks to facilitate cross border access to trade repository data. Canadian regulators and the central bank should have access to all trade repository data regarding Canadian counterparties or Canadian referenced derivatives.

REGIS-TR, as a global trade repository, fully supports such establishments. ESMA supports such initiatives as well, as specified within the EMIR regulation.

Question #1: If the use of a Canadian trade repository were to be mandated, should it be privately developed and operated for profit, privately developed and operated on a not-for-profit basis or should provincial market regulators perform this function directly?

The development of a TR is a time and resource intensive venture, particularly if the service scope of the TR encompasses covering all OTC derivative classes, additionally foreseen to providing value-added services to the industry. Therefore, it may not be feasible or necessary for the provincial market regulators to develop such a trade repository themselves, but rather rely on the expertise of the existing TRs that were willing to offer their services in the jurisdiction.

The invitation of the existing TRs to service the Canadian market would bring efficiency to not only the industry but also regulators. We find numerous benefits to this option, such as the interconnection to international TRs, leveraging on their already acquired experience and know how, lower development efforts, providing a quicker solution to the market and getting access to several added value services, which could further improve the efficient use of the TR for market participants.

Should the development of a Canadian solution be mandated, there are several options available to Canadian regulators to ease the task of creating this new market infrastructure such as “white labelling” or “licensing” of a TR service. A white labelling model could provide a tailored solution for the Canadian market in a time and cost efficient manner. This option could permit Canadian authorities to count on the technical experience, resources and reliability of an existing TR

On the other hand, a licensing solution would permit leveraging on the know-how of an existing TR allowing at the same time, a direct management of the TR by a domestic Market Infrastructure supervised directly by the Canadian authorities.

Both solutions, the “white labelling” as well as the “licensing” of a TR service, could equally be considered as an interim solution while the selected Market Infrastructure develops its own TR following the Canadian rules.