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Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
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Ms. Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: CFTC and SEC Staff Public Roundtable on International Issues relating to Dodd-Frank Title VII

MarkitSERV[1] is pleased to submit the following comments to the Commodity Futures Trading Commission (the "***CFTC***") and the Securities and Exchange Commission (the "***SEC***" and, together with the CFTC, the "***Commissions***") on international issues relating to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "***DFA***").[2]

Introduction

MarkitSERV views its role in the global derivatives markets as an independent facilitator, making it easier for derivatives market participants to interact with each other. To achieve this goal, MarkitSERV provides trade processing, confirmation, matching and reconciliation services for swaps and security-based swaps ("***SB swaps***") across regions and asset classes, as well as universal middleware connectivity for downstream processing such as clearing and reporting. Such services, which are offered by various providers, are widely used by participants in the swaps and SB swap markets today and are recognized as tools to increase efficiency, reduce cost, and secure legal certainty. With over 2,100 firms currently using the MarkitSERV platform, including over 22,000 buy-side fund entities, its legal, operational, and technological infrastructure plays an important role in supporting the swap markets in the United States and globally.

As a service and infrastructure provider to the domestic and international swaps markets, MarkitSERV supports the objectives of the DFA, and the Commissions' objectives of increasing transparency and efficiency in these markets and of reducing both systemic and counterparty risk.

Executive Summary

The swaps and SB swaps markets are international by their very nature. Regulating these markets therefore presents novel and unique obstacles because various national regulations must align to create a level of global cohesiveness that is not typically required of domestic regulations. Because each nation will create their own laws and regulations, however, fully cohesive rules will likely be impossible to achieve. As CFTC Commissioner Scott O'Malia recently stated in relation to the IOSCO report (September 2011) on *Principles for the Regulation and Supervision of Commodity Derivatives Markets*, "while each IOSCO member supports the organization's general principles, each member may have widely different interpretations of

[1] MarkitSERV, jointly owned by The Depository Trust & Clearing Corporation (DTCC) and Markit, provides a single gateway for OTC derivatives trade processing. By integrating electronic allocation, trade confirmation and portfolio reconciliation, MarkitSERV provides an end-to-end solution for post-trade transaction management of OTC derivatives in multiple asset classes. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, central clearing counterparties and trade repositories. In 2010, more than 19 million OTC derivatives transaction sides were processed using MarkitSERV. Please see www.markitserv.com for additional information.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

exactly what regulations would accord with such principles."[3] The same will likely hold true with regard to all international regulators in the process of setting their rules and technical standards: even if regulators can agree on principles regarding the regulation of derivatives markets, their practical application of those principles will likely differ to a great extent from one jurisdiction to another.

While regulatory differences are therefore somewhat inevitable, these differences could threaten the effectiveness of derivatives regulations if, for example, they result in establishing reporting regimes that produce data that cannot be effectively consolidated and aggregated for systemic risks purposes. It could also damage market functioning if participants are subject to conflicting regulations. We therefore urge the Commissions to harmonize their regulations with those of international regulators to the extent possible and, where this is not possible, to recommend the use of internationally-operating third party service providers as they can facilitate the compliance of market participants with varying national regulatory regimes in a timely and cost-effective fashion.

Specifically, we believe that the Commissions should: (1) limit the amount of duplicative reporting and data fragmentation by: (a) allowing counterparties to use Independent Verification Services ("***IVS***") for processing as well as reporting purposes, and (b) providing additional flexibility in their reporting requirements to reflect specific challenges in the international context; (2) permit counterparties to use international third party providers for their connectivity needs; (3) explicitly state that international third party providers, whether or not they are United States-based, will not be required to comply with any DFA requirements for activities wholly outside of the United States; and (4) clarify the extraterritorial reach of the DFA and the Commissions' regulations in order to reduce uncertainty and avoid overlapping and inconsistent regulations with foreign regulators.

Comments

1. **The Commissions Should Ensure that Their Reporting Requirements Do Not Result in Unnecessary Duplication and Fragmentation of Swaps and SB Swaps Data**

Participants in the swaps and SB swaps markets who operate internationally are likely to be exposed to dozens of national reporting regimes that could vary in their scope, timing, and data field requirements. In the United States for example, the Commissions have proposed requirements related to real-time and regulatory reporting which already differ in several aspects.[4] Outside of the United States, reporting requirements will almost certainly differ to an even larger extent. However, because of the great degree of cross-border activity in the swaps markets, reported swap data must be of such nature that it can be consolidated in order to provide meaningful transparency to regulators and/or the public.[5]

The ability to consolidate global swaps data will be complicated by differing regulatory requirements and domestic practices. Two of the complications that are likely to arise due to differing reporting requirements are double reporting and data fragmentation. Double reporting will happen if more than one jurisdiction

[3] *See* Opening Statement by Commissioner Scott D. O'Malia (Sept. 8, 2011), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/omaliastatement090811.html.

[4] For example, while the CFTC has proposed to require SDRs to delay any public dissemination of block trade information for a certain amount of time, the SEC has proposed to require SB SDRs to publicly disseminate certain information immediately upon receipt and to only delay dissemination of the notional size and transaction identifier. *Compare* Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76140, 76176 (to be codified at 17 C.F.R. § 43.5(k)(2)), *with* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 75 Fed. Reg. 75208, 75285 to be codified at 17 C.F.R. § 242.902(b)).

[5] For example, some bank failures have shown that domestic problems might often be triggered by activities outside of the home country. Only by accessing consolidated data related to global activity can such threats be controlled.

requires data reporting for cross-border transactions (and possibly even for transactions that do not stretch across any borders if that data had to be reported to multiple trade repositories). Data fragmentation will happen if the reported data is stored and/or disseminated by various entities, and cannot be easily consolidated.

Both double reporting and data fragmentation can endanger the value of the transparency that is provided to regulators and the public based on the Commissions' rules. The Commissions should therefore carefully ensure that their rules work together with the rules that are implemented by foreign jurisdictions in order to avoid these two harmful results. We believe that the following measures would reduce the potential for duplicative reporting and data fragmentation in the international context and enable a timely and cost efficient implementation of the rules proposed by the Commissions as well as by international regulators.

a. The Commissions Should Permit the Use of Independent Verification Service Providers Who Operate Internationally for Reporting Purposes

We believe that the best way to avoid duplication and fragmentation of swaps data would be to create global trade repositories for each asset class. However, this might not be a viable option because of the many challenges that national regulators can face in terms of accessing the complete datasets that are relevant to them in a timely manner.[6] Acknowledging that several jurisdictions are likely to establish their own trade repositories, then, we urge the Commissions to carefully ensure the accuracy of the data that is held in domestic swap data repositories ("***SDRs***") or security-based swap data repositories ("***SB SDRs***") and its consistency with data held in foreign trade repositories. We believe that this can be best achieved if international providers of IVS[7] are tasked with reporting of transaction data when reporting is required in multiple jurisdictions.

Because swap and SB swap transactions are so often cross-border, the processing of such transactions is often facilitated by IVSs who operate internationally. We believe that using these entities for reporting, as well, would provide several benefits to the Commissions, international regulators and market participants.

- First, IVS can perform the reporting of a single set of confirmed and accurate swap transaction data to the trade repository as the IVS also facilitates the agreement of both counterparties on the full set of transaction details.

- Second, an IVS could serve as a single third party to handle the counterparty's various confirmation and reporting obligations, thus reducing costs and effort compared to contracting with several third parties.

- Third, using IVS for confirmation and reporting could leverage existing and planned infrastructure because many internationally-operating IVS, such as MarkitSERV, can facilitate data reporting based on established connectivity with multiple parties. IVS are therefore well-suited to assist

[6] For example, extraterritoriality issues would make it difficult if not impossible for any nation to have jurisdiction or control over such a repository. Additionally, it would likely prove to be difficult for all nations to agree on the selection of a global trade repository.

[7] We define IVS as entities that act independently from, but on behalf of, all counterparties to a swap or SB swap transaction to facilitate the agreement between those counterparties upon a verified record of swap or SB swap transactions transaction details where such record is relied upon by the counterparties to the swap or SB swap transaction and other market participants for communication of transaction details to a clearing agency or DCO. *See also* Letter from MarkitSERV to the SEC, 6 (April 29, 2011).

counterparties in complying with their respective national reporting obligations and, while doing so, can also facilitate the use of relevant national standards for documentation.[8]

For these reasons we believe it is important for counterparties to be able to delegate their various regulatory obligations to internationally-operating third party service providers. These entities tend to be subject to multiple jurisdictional requirements, 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.

b. Reporting Requirements Should Contain Additional Flexibility To Facilitate The Cost-Effective Compliance With Reporting Obligations In The International Context

In order to maximize the cohesiveness of global swap reporting and enable cost-effective compliance in the international context, the Commissions should clearly define reporting obligations according to the following guidelines:

First, we believe that the counterparty to the transaction that is most capable of performing the reporting responsibilities should be responsible for all data reporting. We also believe, however, that both regulatory and real-time reporting rules should be structured so that, while U.S.-based end-users are responsible for reporting to a United States-based SDR, they are also permitted to delegate such obligations to the non-U.S. counterparty if that party is a swap dealer ("***SD***") or major swap participant ("***MSP***") (as long as this party is willing to perform such function), or to a qualified third party. This would provide the Commissions with a jurisdictional nexus to ensure that domestic reporting is completed but would provide end-users with appropriate flexibility as to how to best satisfy their obligations in light of their limited resources and lack of expertise.[9]

Second, we believe that the reporting party should be able to choose which SDR to report to, while being allowed to delegate the actual reporting to qualified third parties where it sees fit.[10] By providing such flexibility, the Commissions would enable the reporting party to satisfy its reporting obligations in the most efficient and least costly manner.[11] Further, this approach is likely to result in a lower degree of data fragmentation because, for operational reasons, major reporting parties will likely limit the number of SDRs they will use.

We believe that both of these standards should apply regardless of whether the transaction is executed on a SEF and/or whether it is centrally cleared or whether this transaction is purely OTC. This would make the rules easier to apply, easier for foreign jurisdictions to adopt, and would ensure that a party to the transaction (instead of a platform or clearinghouse) can chose the most efficient manner of performing its

[8] Many market participants in France and Germany, for example, prefer using a domestic master agreement, instead of the one that is the standard in the United States and internationally (the ISDA Master Agreement). IVS are experienced in working with these types of varying national documentation standards and can be useful in aggregating data that is derived from such inconsistent documentation.

[9] The Canadian Securities Administrators Derivatives Committee has proposed such a requirement. *See* CSA Consultation Paper 91-402 – Derivatives: Trade Repositories, at 17 (June 23, 2011).

[10] Internationally-operating IVS are well suited to assist counterparties in complying with their respective reporting obligations and can assist with applying relevant national standards for documentation.

[11] Reporting costs consist not only of direct cost (the fee charged by the trade repository for receiving and storing the trade) but also of indirect cost (*e.g.*, connectivity and reconciliation) which can be significant. It would therefore reduce the cost of implementation if reporting parties were able to rely on existing connectivity for reporting instead of being obliged to establish new connectivity with all existing trade repositories.

reporting across all of the regions and asset classes that it is active in. This should also reduce the potential for harmful data fragmentation domestically and internationally.

2. Counterparties Should Be Provided With Sufficient Flexibility To Establish International Connectivity According To Their Business Needs

In addition to reducing unnecessary duplicative reporting and data fragmentation, we urge the Commissions to ease the burden of new regulations on market participants. Especially for international transactions, the Commissions' rules will impose significant costs and operational burdens on market participants, who will be required to establish and maintain innumerable connections with a number of clearinghouses, trade repositories, and execution facilities across several regions.[12] Moreover, the Commissions' rules will require data to pass seamlessly back and forth via these connections in order to confirm transactions, meet reporting deadlines, and notify counterparties of the status of their transactions. We believe that this will place a great burden not only on SDs, MSPs, and end-users, but also on SEFs, DCMs, CCPs, and SDRs. However, we believe that the Commissions would greatly reduce the burden on these entities by allowing them to use qualified third party middleware providers to meet the Commissions' connectivity requirements and the participants' connectivity needs.

International middleware providers, such as IVSs, already act as "universal adapters" by linking market participants, including non-SDs/MSPs, to various CCPs, SEFs, and DCMs, regardless of their location. As such, connectivity is often not established directly between registered entities, but provided by qualified third parties instead. As developments in international markets over the past several years have shown, this approach is not only efficient for market participants, but will also prove to be helpful for the timely implementation of various rules, both domestically and even more so in the international context.

We believe that the Commissions should permit this market-driven practice to continue by enabling the reporting party to delegate the routing of transactions through qualified middleware providers for processing, execution, clearing and ultimately reporting. Further, in the interest of the counterparties to a transaction, CCPs, SEFs, and DCMs should be explicitly required to provide open access not only to other registered entities directly, but also to third party middleware platforms who seek to establish universal connectivity. Such a provision would help to avoid any unnecessary restraint on competition,[13] and could also facilitate the timely implementation of the various requirements, particularly in the international context.

3. The Commissions' Rules Should Apply Equitably to Internationally-Operating Qualified Third Party Service Providers

As explained above, IVS and middleware providers, such as MarkitSERV, play an important role in the international swaps and SB swap markets today by providing confirmation, connectivity, reporting, reconciliation, and other services. We therefore urge the Commissions to avoid placing unnecessary burdens on these internationally-operating service providers in order to allow them to continue performing these roles under the upcoming requirements not only in the United States, but also internationally.

Therefore, we request that the Commissions explicitly state that IVS are permitted to operate in the United States swaps and SB swap markets without their non-United States business being captured by the Commissions' regulations. Similarly, we believe that United States-based third party service providers

[12] *See, e.g.*, Requirements for Processing, Clearing, and Transfer of Customer Positions, 76 Fed. Reg. 13101 (published March 10, 2011).

[13] For example, we believe that it would restrain competition if CCPs required their clearing members to use their own upload mechanism to submit swap or SB swap transactions for clearing.

should be permitted to perform their services in countries outside the United States without this activity being *per se* regulated by the Commissions' regulations. Instead, United States-based third parties should only be regulated by the Commissions when their activities are inside the United States or have a substantial impact on United States commerce, as described in the DFA. This is necessary to ensure that United States-based IVS are not disadvantaged when competing with foreign entities providing the same services outside of the United States.

4. The Commissions Should Clarify the Extraterritorial Reach of their Regulations

The DFA states that its provisions will apply to activities that "have a direct and significant connection with activities in, or effect on, commerce of the United States."[14] We believe that both foreign regulators and market participants need to have sufficient clarity regarding the reach of the Commissions' regulations. Foreign regulators, for example, will need to receive such clarification to be in a position to properly promulgate their own rules, while market participants need it to start the necessary systems preparations to ensure their future compliance with the Commissions' requirements. Further, we believe that the Commissions should generally aim to make use of a rather limited interpretation of the meaning of "direct and significant connection."

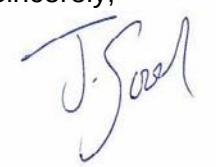
We therefore urge the Commissions to provide an interpretation of this provision. Specifically, we request that the Commissions provide practical examples of the type of activity which would and would not be caught within the DFA's extraterritorial reach. Such clarification, based on an appropriately defined reach, would help avoid unnecessary compliance cost by reducing both uncertainty and the potential for overlapping regulation. Finally, these rules should be easy to apply and clear so that market participants will know ahead of time whether the Commissions' rules would apply to certain activities or not.

* * * * *

MarkitSERV appreciates the opportunity to comment on the international application of the Commissions' proposed rules, and 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 Gina Ghent at gina.ghent@markitserv.com.

Sincerely,



Jeff Gooch
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[14] *See* DFA Section 722(d).