

P.O.Box 75283, 1070 AG Amsterdam, The Netherlands

Committee of European Securities Regulators
Attn. Eddy Wymeersch
11 – 13 Avenue de Friedland
75008 Paris
France

Asset Management

Schiphol,
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Visiting Address
Gustav Mahlerplein 3
1082 MS Amsterdam
The Netherlands

Phone
+31 20 604 8168

Attachment(s)

Our reference

Your reference

Internet
www.apg.nl

E-mail
gerben.everts@apg-am.nl

Subject: **CESR Consultation re. trade repositories**

Dear Mr Wymeersch,

APG All Pensions Group (hereinafter: APG)¹ welcomes the opportunity to provide comments on the Committee of European Securities Regulators' consultation document on trade repositories for OTC derivatives. Please be informed that APG has the following observations on efforts to build data repositories.

1. APG views the main purpose of trade repositories for OTC derivatives as providing transparency to regulatory/supervisory authorities on the market activity in each OTC asset class. APG believes that the collection of all OTC trade-related information can improve market transparency. However, APG is not yet convinced of the rationale of the establishment and regulation of trade repositories next to the intended clearing of OTC derivatives through central clearing houses. Although trade repositories for OTC derivatives could be useful tools for enhancing operational procedures and transparency in financial markets, the benefits of collecting all OTC trade-related information might not justify the operational and administrative burden that market participant may face. APG has serious concerns that the establishment and regulation of trade repository could lead to significant costs for market participants and to unnecessary duplication of notification obligations.
2. Therefore, we believe that the establishment and regulation of trade repositories for OTC derivatives should be well considered and unnecessary extra efforts or costs for market participants should be avoided. In this respect, APG would like to emphasize that information on some OTC derivatives market segments is already compiled. APG believes that once data is reported to a trade repository of a certain asset class, arrangements between the repository/ies and regulatory/supervisory authorities should be in place to ensure that these authorities are provided with all relevant data. In addition, these authorities should not be allowed to request any additional regular notification of derivatives positions from market participants in order to prevent unnecessary efforts or costs. Furthermore, where possible, current European legislation regarding notification requirements on OTC derivatives positions should be taking into account when establishing or drafting regulation on trade repositories for OTC derivatives. Otherwise, we do not see any additional benefits of trade repositories for OTC derivatives and this would only create fragmentation, duplication and costly red tape. Therefore, we would like to urge that the

¹ APG manages and administers the collective pension schemes for *inter alia* the government and educational sectors, construction companies and housing corporations. With 3,400 staff, APG administers the pensions of 4 million Dutch citizens on behalf of more than 20,000 employers. APG has assets under management of approximately EUR 205 billion (30 June 2009) and manages around 30% of all collective pension schemes in The Netherlands.

establishment and regulation of trade repositories for OTC derivatives should be preceded by an adequate impact assessment.

3. It should be avoided that service providers impose monopolistic pricing for their services. Any possible regulation on trade repositories for OTC derivatives should take into account unfair pricing by service providers.
4. Any possible regulation should guarantee that data received by trade repositories for OTC derivatives is not used for other reasons than specifically envisaged and that data is protected accordingly.
5. In the case that trade repositories for OTC derivatives will be regulated and established in Europe we believe that the EU rules on the information that has to be recorded with data repositories, applicable forms as well as any initiatives on communication interfaces should be fully harmonised.

Please find below our answers to the questions that are raised in the consultation document. These answers are formulated on the assumption that our abovementioned observations will be taken into account.

Questions:

Do you agree with the functional definition of what constitutes a trade repository?

What other characteristics of a TR do you consider essential?

We consider the following characteristics of a trade repository for OTC derivatives contracts as essential. A trade repository is a platform where comprehensive data on traded OTC derivatives contracts is registered and post-trade recordkeeping on OTC derivatives contract is enabled. A trade repository provides information on OTC derivatives contracts, such as the number and value of outstanding derivatives contracts or the size of counterparty risks or outstanding positions. All other possible activities or services of trade repositories (such as ancillary services) should not be considered as essential characteristics.

Questions:

In your opinion, what kind of information should be available to: regulators, market participants and the general public, respectively? Please differentiate by asset class where appropriate. Do you agree that trade repositories should provide adequate processes to ensure the reliability of the data provided? How could reliability be ensured? Do you see any other entity with legitimate information needs with regard to OTC derivative trades recorded in a trade repository? If yes, please explain.

We believe that the list of persons/entities with access to information recorded in a trade repository should be limited and that trade repositories should be obliged to provide information on an unfair basis. The main purpose of trade repositories should be to provide full transparency of market activities to regulatory/supervisory authorities and these authorities should have full access to data from trade repositories, on an equal and a confidential basis. The access and the right to publish data should be strictly regulated in order to ensure that only appropriate, reliable and aggregated industry level information (on open risks positions and trading volumes) is released to the general public. The general public should not have access to specific confidential information. We do not see other entities with a legitimate interest in having access to data from trade repositories.

Indeed, we agree that trade repositories on OTC derivatives should have adequate processes to ensure the reliability of the data provided. The reliability could be ensured by state-of-the-art IT, organizational controls and by regulatory oversight of trade repositories. APG believes that there should be arrangements in place to maintain the security of information received and kept by data repositories. Regulatory/supervisory authorities should also be held responsible for the security of information

registered with data repositories. They must see to it that this information is not used for illegitimate purposes.

Questions:

Do you see a need for establishing TR facilities in Europe if a global repository already exists elsewhere? Do you believe that a European repository is needed for each OTC asset class as described above (i.e. CDS, interest rate and equity derivative markets)? Please give reasons. If yes, what form should the trade repository facilities to be established in Europe take (e.g. single point of information, back-up facility) and which trades should be register in such facilities (e.g. trades of European market participants, trades referring to European underlying entities)? Please specify.

The derivatives markets are global markets. If the regulatory requirements would be internationally agreed upon and European regulators would have full access to third country repositories, we do not see a need for establishing TR facilities in Europe in case a global repository already exists. As long as the regulatory requirements are different and/or European regulators would not have access to trade repositories, the possibility of establishing European data repository/ies is favourable.

Data repositories are relevant for the major OTC asset classes. However, multiple repositories within one asset class should be avoided (because of the risk of duplication, fragmentation, unwanted extra costs or omissions). In this respect, APG is concerned over unnecessary administrative burdens for the industry arising from the establishment of and reporting to trade repositories, in particular a duplication or even multiplication of reporting obligations in the case of the establishment of more than one repository for one product class.

Questions:

Do you think there should be harmonised EU requirements for the regulation and supervision of trade repositories? To what extent do you expect that protocols, common market practices and the like, surrounding proposed solutions for trade repositories, could promote harmonisation and foster safety and efficiency in the post-trading process? Please provide reasons for your position.

We believe that regulatory requirements should be internationally agreed upon and that European requirements for the regulation and supervision of trade repositories should be harmonised as much as possible, respecting proportionality and avoiding unnecessary costs. When drafting such harmonised rules, the European authorities should engage with industry. These harmonised requirements should allow for reasonable supervisory oversight and access to data, and the regulatory/supervisory authorities should guarantee strict rules and controls with regard to the protection and IT security of the data. This means that we do not believe that harmonisation, safety and efficiency can be promoted by 'soft rules', but at the same time we do believe in the benefits of industry engagement by involving industry as much as possible in the rulemaking process.

We look forward to continue our constructive dialogue with CESR to ensure OTC derivatives remain a useful economic tool to manage risk and expand credit availability.

If you would like to discuss our views in further detail, please do not hesitate to contact us.

Yours sincerely,



Mr. Gerben Everts
Compliance Officer