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Mr. Carlo Comporti
Secretary General

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Trade Repositories in the European Union (CESR/09-837)

Dear Mr. Comporti,

In response to the above mentioned consultation, please find below BVI's¹ views on the subject at hand. We are pleased to have the opportunity to comment on the Trade Repositories (TR) in the European Union.

The BVI welcomes CESR's interest in the establishment of trade repositories in the European Union. We agree with CESR's view that in principal TR should improve market transparency and therefore facilitate the stability, efficiency and a orderly functioning of a financial market. We remain highly supportive of initiatives which increase the transparency in the OTC derivative market.

One objective of TR is to increase the information on the risk exposure for individual market participants. Moreover, TR should increase prudent self discipline by market participants.

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¹ BVI Bundesverband Investment und Asset Management e.V. represents the interest of the German investment fund and asset management industry. Its 88 members manage currently assets of nearly EUR 1.6 trillion in both mutual funds and mandates. BVI's ID number in the EU register of interest representatives is 1575282143-01. For more information, please visit www.bvi.de.

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I. General Comments

We believe that the following elements are crucial for the creation of a trade repository.

Supervisory authorities and the public policy should recognize that there are reasons for the coexistence of the different levels of transparency, and should push for higher transparency only in those cases where it can remarkably increase market efficiency as well as benefits for participants.

Trade repositories should be required to, among other things, make aggregate data and statistics on types of transactions and types of counterparties available to the public and to the OTC market's supervisory authorities.

A TR should provide individual counterparty data on open positions, trading volumes and prices only to competent supervisory authorities for the purpose of maintaining financial stability. This detailed disclosure should also include information on the largest exposure to certain products and parties in order to be better able to assess the level of risk concentration in the market.

Any information given to the general public should be carefully considered. A publication of e.g. open positions may influence the price formation process in the OTC markets and may reduce liquidity.

Therefore, it is significant that supervisory authorities determine in close co-operation with market participants, industry associations and service providers scope and details of publication of the OTC data.

Furthermore, adequate representation of buy-side users must be reflected in any TR's governance rules and organizational structure. Buy-side representation on the body governing of a TR is needed to ensure fair treatment of all users, especially in case of a monopolistic TR.

II. Questions

BVI answers to the CESR's specific questions as follows:



a) Functions and characteristics of a Trade Repository

Do you agree with the functional definition of what constitutes a trade repository? What other characteristics of a TR do you consider essential?

We are principally in line with CESR's proposal on a functional definition that all OTC-derivatives transactions should be maintained in a trade repository. However, some derivative products might not be recorded in a TR any time soon because of their low monetary value or low volume of transactions and/or complexity of the instrument. These are the products which are less likely to be standardized in the foreseeable future, which makes their recording in the TR difficult and cumbersome. Any extension of transparency must be carefully calibrated. BVI reiterates its position that transparency is good, but only if it does not reduce liquidity.

The TR should include as well central settlement, electronic novation and affirmation and portfolio compression in order to enhance operational efficiency in the post trade environment. The functionality of a TR should not be less than what is actually provided by the Trade Information Warehouse (TIW) which is operated by DTCC in the US. Moreover, this service leads to a substantial reduction of operational risk.

b) Availability of data by trade repositories

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.

The investment management industry indicates that operational costs of TR for reporting firms have to be considered. However, a central repository can also reduce the reporting burden for individual financial institutions.

In order to increase the credibility of derivative markets, high level aggregate statistics on positions, price and transactions should be disclosed by the TR



to OTC markets supervisory authorities and/or relevant user groups and trade associations.

BVI believes that competent authorities should also receive individual position reports from the sell side or its agents such as TR, or alternatively should be able to make inquiries (report requests) at such repositories in order to provide for stability in this part of the financial system.

BVI feels that disclosure of individual company positions to the general public should be avoided in order to protect proprietary portfolio information. It should be noted too, that disclosure of derivatives positions without knowledge of other portfolio positions they could be hedging is of doubtful use and could actually be entirely misleading. The level of granularity of information needs to be considered carefully. Only disclosure of statistics on standard products aggregated at a sufficiently high level to the public should be considered.

The regulators need to consult with the market place on the relevant contract categories to be reported and for each contract category the timing of reporting and level of granularity of information needed. Such consultation should help defining an industry wide action plan for the implementation of a comprehensive reporting system which will increase safety and soundness in the derivatives markets going forward.

c) Location of a trade repository

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 registered in such facilities (e.g. trades of European market participants, trades referring to European underlying entities)? Please specify.

For the investment management industry it is important to avoid proliferation of trade repositories with different interfaces/input systems, which would increase costs and operational risk in the middle and back office. Therefore we accept the idea of a single TR. The governance structure of a single TR

utility for specific or all OTC derivative transactions must allow for adequate regulation of the monopoly, in particular adequate representation of the different user groups. For data protection issues it should be considered to require a monopolistic (non-EU) TR to establish a separate European (single point of information) facility. The situation of a non-EU monopolistic TR is similar to the SWIFT case. Like SWIFT, a TR should be able to separate OTC transactions involving European markets/products from the rest of the world.

d) Legal framework for a trade repositories

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.

The TR provider should act as a service provider to the industry. The work of such a repository should be based on open data standards, especially ISO standards for the identification of parties, instruments and accounts. Identification of OTC transactions should be based on the ISIN (ISO6166).

The TR should not be able to claim any intellectual property rights for the industry-delivered content of the data repository. There should be no license requirements or fees for the use of the data repository content in internal systems of market participants.

User fees should be primarily based on the service delivered (i.e. data feeds). We believe that if the TR provider cannot demonstrate that the total revenue across all clients on a like-for-like basis is only increasing by either (a) inflation (RPI) or similar, or (b) an adjustment to reflect an expansion in OTC transaction coverage, then the governing body should not approve the TR pricing schedule.

A TR based in the European Union should be registered, regulated and supervised. The necessary EU regulation should be harmonised as far as possible with the US proposal to regulate the local trade repository.



As it is currently difficult to harmonise the legal regulatory and supervisory framework for post trading activities in the European Union, it might be useful to explore the CESR/ESCB Recommendations for Securities Settlement Systems and Central Counterparties to incorporate governing principles for trade repositories.

Given the important role of a TR in a central settlement, novation, affirmation and portfolio compression of OTC derivatives transactions, its protocols and market procedures will have a strong harmonizing effect on the overall (post) trading process of OTC derivatives, thereby fostering safety and efficiency.

We hope that our comments and suggestions provide some assistance to CESR's further work on establishing a trade repository in the European Union. In this respect, we remain at CESR's disposal for further in-depth discussion of the issue at hand or any questions pertaining to our reply.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

Signed:
Rudolf Siebel LL.M

Signed:
Marcus Mecklenburg