

CESR Consultation Paper on: Transaction Reporting on OTC Derivatives and Extension of the Scope of Transaction Reporting Obligations

Consultation response from



The Depository Trust & Clearing Corporation

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The Depository Trust & Clearing Corporation (DTCC) welcomes the opportunity to provide input to this consultation. We do so from the perspective of being the operator of two global trade repositories covering credit default swaps (live since 2006) and equity derivatives (live July 2010).

About DTCC

The Depository Trust & Clearing Corporation (DTCC) brings to the discussion considerable experience and expertise in the operation of critical post-trade market infrastructures. DTCC has a nearly 36-year history of acting as a market-neutral provider of clearing, settlement and depository services to the financial services industry. The organisation is owned and governed by our members and operated on an “at cost” or not-for-profit basis. DTCC is the product of 20 years of consolidation effort among multiple, competing central counterparties (CCPs) and central securities depositories (CSDs). Our central depository provides custody and asset servicing for 3.5 million securities issues valued at \$27.6 trillion and covering 118 countries and territories.

Today, DTCC’s customers are increasingly global financial institutions dealing in globally traded instruments. In response to these changes, DTCC is, more and more, developing services to accommodate global regulatory requirements, and offers services to a networked community of thousands of financial firms in dozens of countries around the globe.

Throughout its history, DTCC has worked closely with market participants and regulators to bring safety, soundness, risk mitigation and transparency to the financial markets. DTCC has been present in Europe since 1995 and today provides a number of services in Europe. Through our subsidiary, EuroCCP, we are one of the leading pan-European central counterparties in the equities market.

DTCC’s Deriv/SERV Matching and Confirmation Service – launched in 2003 – automates the legal confirmation process for OTC derivatives. From a time when only 15% of OTC trades were electronically processed, the share of credit derivatives traded worldwide and captured electronically through this service has risen to more than 95% today. In September 2009, DTCC combined this trade confirmation service with global financial services information company, Markit’s electronic processing platforms to extend benefits to end users through a jointly owned company, MarkitSERV, that is headquartered in the EU.

In addition, DTCC’s Trade Information Warehouse (TIW) – launched in 2006 – is the world’s only comprehensive database and repository for OTC credit derivatives. The establishment of this global repository marked the first time that the financial services industry had addressed OTC derivative inventory control and transparency systematically. TIW provides a central automated repository to house and service virtually all credit default swap (CDS) contracts. DTCC announced in June 2010 that this CDS database service will now also be offered through an EU based trade repository company, DTCC Derivatives Repository Ltd, to specifically address regulator concerns regarding data access.

At the height of the Lehman Brothers crisis, TIW held a large proportion of the information on CDS positions. Although market speculation put the CDS risk exposure from Lehman Brothers at \$400 billion, DTCC was quickly able to tell the market publicly that the true exposure to Lehman Brothers was closer to a net notional value of about \$6 billion. The actual value that changed hands eventually was \$5.2 billion. Since then, TIW has been publishing aggregated OTC derivatives data for the public on a weekly basis on the website www.dtcc.com, and has been providing regulators in the

Americas and Europe information which they require, with the agreement of the market participants where necessary.

Comments

DTCC broadly supports the 5 overarching principles identified in the consultation paper, i.e.

- a) *Access to data should be guaranteed to regulators wherever a trade repository is located:* DTCC has been a strong advocate of this principle for a number of years. We have worked closely with the OTC Derivatives Regulators Forum (the 'ODRF'), many of the members of which are members of CESR, and fully support the access principles published by the ODRF in July of this year. Indeed, we had already informally implemented similar principles in advance of their final agreement by the ODRF.
- b) *Information received by regulators should be in a specific unified format:* Again, DTCC has supported this principle in practice for some time having implemented a specific information format that we have shared with the regulatory community. Since January 2010, we have responded to over 70 regulatory requests for information from our CDS repository, the Trade Information Warehouse ("TIW"), and this information has been supplied in a consistent format to allow unambiguous interpretation. Where regulators have requested specific subsets of information, we have worked with them to ensure it is formatted appropriately. We would welcome further efforts to standardise the output of trade repositories across asset classes.
- c) *Data quality is paramount since it impacts the quality and accuracy of supervision:* As the operator of the only repository that has both significant data content and a meaningful operating history, we can confirm that data quality is significantly improved where both counterparties are required to report. We would recommend that this important fact be considered by legislation related to the requirement to report data to a trade repository.
- d) *Duplication of reporting obligations for firms or investors should be avoided:* As a user owned 'at-cost' utility service provider, we are constantly working on behalf of our user community to reduce cost and therefore support all efforts to eliminate duplication and resource wastage.
- e) *Extending transaction reporting to OTC derivatives is urgent and the work to achieve that is much more advanced than the work on position reporting:* Based on our analysis of the responses to the European Commission's recent EMIR consultation paper, we believe this view is shared by a significant proportion of the financial community. Our own direct experience with CDS contracts has clearly demonstrated the value of the collection and storage of such information.

Question 1: Do you agree with the solution proposed by CESR for the organisation of transaction and position reporting of OTC derivatives?

Under the EMIR proposals, a trade repository can be well placed to act as a reporting hub depending on the design of the repository service and the quality of the data therein. In the case of DTCC's Trade Information Warehouse for CDS ("TIW"), the positions are derived from the bilaterally-reported underlying transactions, with market events (such as credit events, and reorganisations/renames) being centrally processed and the associated positions kept up to date. This level of granularity and data quality can be leveraged to provide regulators and other supervisors with the information they require to carry out their appointed tasks.

There are a number of advantages to this model:

- Counterparties operating in multiple jurisdictions are able to report to a single trade repository over a single technical connection thereby reducing the current cost of reporting compliance and significantly reducing the risk of duplicated and/or omitted reporting;
- Similarly, regulators would require to link into a trade repository in order to obtain their reporting data. Utilising such an approach would avoid possible discrepancies in the processes and formats that may occur if local regulators adopt different trade reporting requirements and technologies. Either regulators could look directly to such a repository to meet their data needs, or the repository could interface directly to the local trade reporting mechanism in a given jurisdiction and report accordingly. Over and above savings to market participants, this approach would also mean a saving to regulators by keeping implementation and maintenance costs low;
- Where appropriate, suitable data can be made available to the public in a centralised and consistent manner without imposing an burden on regulators to collate and publish consolidated information;
- Standards are easily developed, deployed and adopted by all market participants as well as regulators and supervisors. DTCC has long been a supporter of FpML as a mechanism for the transmission of data for the OTC derivatives markets. Adoption of this standard across all relevant parties brings significant cost advantages;
- Such an approach could allow more sophisticated analyses to be undertaken on the data, such as the analysis of transaction activity in the context of the size of a given open interest in any given underlying. Such additional analyses are made possible only by the existence of consolidated, high quality, global data sets.

In line with our previously expressed views, the model that is applicable to CDS is not necessarily the most appropriate for other asset classes (such as interest rates, equity derivatives, commodities, fx). The nature of the products will dictate the overall operational infrastructure. For example, credit events on reference entities are only relevant to CDSs. That said, the adoption of a standard such as FpML for data exchange would apply across asset classes.

Question 2: Do you have any other views on the possible ways to organise transaction and position reporting on OTC derivatives?

DTCC believes the following principles are important in any decision making process concerning transaction reporting on OTC derivatives and the extension of the scope of transaction reporting obligations:

1. Any reporting requirements established under MiFID and/or EMIR, as well as any other regulatory instrument, must be complementary. Therefore, for regulatory purposes, transaction information need only be reported once by any eligible counterparty to an appropriately authorised data repository.
2. All transactions whether executed electronically or otherwise, and whether centrally cleared or not should be reported directly to a trade repository as soon as is practicable, ideally on the day the trade is executed.
3. To ensure the highest quality of reported data, and within the confines of applicable data privacy laws, both counterparties should be required to report their transaction information to the same trade repository, with the exceptions of private individuals who should be exempted from this requirement.
4. In order to facilitate this reporting, it should be possible for counterparties to report (again, with the exception of private individuals) via an authorised reporting agent if this can provide a more cost effective solution for smaller counterparties. This agency reporting needs to be formally documented, including recognition by the repository. This formalisation is important for two reasons:
 - It will allow precise and consistent identification of customers
 - It will allow the repository to obtain necessary consents to share data, which will still be important for transactions outside the EU, in which EU regulators have an interest
5. The OTC derivatives business is a global business and the information to be reported should be defined on a global basis, i.e. there should be a single regulatory reporting standard per asset class. We recommend this be determined by the ODRF as it must contain all the data elements required by the regulatory community.
6. As this reporting is by definition post-trade, we would recommend that the reporting mechanisms adopt the Giovannini protocol for reporting purposes. DTCC believes that the adoption of FpML by all participants would be a significant positive step towards a consolidated and seamless reporting infrastructure.

As referred to earlier, the OTC derivatives market is global in nature. Derivative trades can be, and are executed outside Europe every day on European underlyings and vice versa. As has been seen with CDS data, regional repositories would not, in practice, allow regulators to complete the tasks they have been set, i.e. the identification of systemic risk and market abuse. Regional repositories can only provide one piece of the picture and, without seeing the whole view, it is impossible to determine the significance of the visible data. A regional mandate can only equal regional data. Of considerably more value to the regulator is a solution where regional mandates are combined to form a global mandate and therefore a global database. Such a combination of mandates into a global solution (as opposed to a single global mandate) does not necessarily mean the emergence of a monopoly provider, but could lead to one. We recognise this could cause concerns about monopoly creation and subsequent abuse of monopoly and we would recommend an at-cost co-operative model, under appropriate regulatory oversight, as an appropriate mechanism for mitigating this concern.

It is important that both centrally cleared and non-cleared transactions and positions are reported to repositories. This is particularly relevant in the analysis of concentration/large exposures that may be spread across multiple CCPs in a given market.