xtrakter

Mr. Jean-Paul Servais
Chair of MiFID Level 3
CESR
11-13 avenue de Friedland,
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France

27 February 2009

By email

Dear Mr. Servais,

CESR Call for Evidence on the technical standards to identify and classify OTC derivative instruments for TREM.

Xtrakter is a leading provider of capital markets data, operational risk management, trade matching and regulatory reporting services to the global securities market. Under the Markets in Financial Instruments directive (MiFID) it is an Approved Reporting Mechanism (ARM) to the: FSA (UK), AMF (France), AFM (Netherlands) & the NBB (Belgium). Xtrakter has 300 clients located globally.

Xtrakter welcomes the opportunity to comment on the CESR call for evidence CESR/09-074. We trust our response will provide appropriate feedback and clarity in respect to the method of reporting OTC derivatives. In general the response advocates a pan-European approach consistent with existing super-equivalent regimes. More detailed points are set out below.

Question 1: What technical standards do you use or intend to use to classify and identify OTC derivatives?

Question 2: If you do not use standards, how do you classify and identify OTC derivatives within your IT systems? Please provide your classification and identification systems where possible?

1. Transaction reports must contain specific information which is relevant to the type of financial instrument in question and which the competent authority declares is not already in its possession or is not available to it by any other means. The industry believes the current MiFID required reporting fields when completing a transaction report to a competent authority are appropriate from a cash message reporting perspective. However the industry believes the MiFID fields do not adequately consider the complexity of OTC derivatives which results in considerable difficulties in reporting such instruments.

2. Significant industry concerns highlight the discrepancies with requirements in respect to transaction reporting. The cost incurred by the industry is considerable in this context. The industry is concerned in respect to the potential increase regarding the reporting requirement across the EU for OTC derivatives which the UK regulatory authority requires from a super-equivalent perspective which highlights the variance in reporting requirements. It is felt appropriate cost benefit analysis should be conducted if this is being considered for implementation across the EU.

3. As a result of the wide range of additional information requirements that competent authorities are able to make under MiFID, obstacles remain to a consistent approach being applied to transaction reporting across the European Union. It was widely understood that MiFID was to provide a common approach to the requirement in this regard. The industry would stress this has not been achieved and has resulted in confusion, potential regulatory risk and significant cost to the industry in an attempt to meet differing requirements. If reporting OTC derivatives was to materialise across member states, a pan-European approach in OTC derivative reporting would be needed for the financial impact on firms to be reasonable.

4. Competent authorities need to adopt a consistent approach across the EU and approach the relevant regulator for the information required so that the information obtainable will meet the local requirements in line with the reporting obligation. The requests, and the handling of these requests, need to be consistent across the EU. Failure to ensure this will lead to potentially multiple reporting requirements to different competent authorities which will go against the spirit of MiFID transaction reporting requirements.

5. In this context, some member states have already implemented super-equivalent requirements as regards OTC derivatives. These member states have therefore gained expertise and experience in this area. An example of this is the UK FSA super-equivalent regime. Reporting of OTC derivatives to the UK FSA has been of a significant level and it is felt this is also true when considering the potential of total activity from a European perspective. The industry would therefore strongly urge CESR to seriously consider the current FSA approach when designing a consistent European approach.

6. The standards for identifying and classifying OTC derivatives for regulatory reporting purposes must also be fully aligned with the corresponding standards used for proposals for central clearing of OTC derivative trades, such as Commissioner McCreevy's initiative for credit derivatives clearing. The inefficiencies of doing otherwise would be a major concern to the industry.

Question 3: What characteristics do you use to create identifiers for OTC derivative contracts for your system (if relevant)? Please provide practical examples.

7. The industry is keen to support regulators and recognises the importance that regulators have at their disposal the appropriate information in respect to identifying potential market abuse and equally the importance of maintaining market confidence. However the industry the industry would emphasis the cost of any additional requirement needs to be

proportionate to the expected benefit of such changes and therefore should be subject to appropriate CBA.

8. The CESR consultation paper does not specifically refer to AII. We believe that the industry partnership with regulators to reach the AII method was vital in order to obtain a satisfactory solution supported by the industry for the purpose of transaction reporting. The initial regulatory approach to the requirements was not considered appropriate by the industry and highlighted the potential costs and complexities of the suggested approach to CESR and the regulators.

9. The OTC derivatives market is even more complex than the exchange-traded derivatives one. This market relies on bespoke instruments that may be created for a single transaction in the instruments lifetime. The additional cost and the time spent on sourcing an identification code for example for such instruments would be disproportionate in comparison of the expected benefits. OTC derivatives are complex instruments which are often difficult to input into what is felt to be a system best suited for cash message reporting. Interestingly the UK transaction reporting regime provides a descriptive field for free text describing the instrument being traded. Such considerations need careful attention to avoid heavy additional costs on the industry. The industry would therefore given the degree of activity being reported to the UK FSA encourage CESR to consider the UK regulators schemers in the event of considering rolling out a pan European requirement for the reporting of such activity. The FSA has been pro active in an open dialogue to identify appropriate reporting of such instruments. The industry would also urge that CESR adopts similar practical approaches at to the types of OTC derivatives reported as the UK regulator has acknowledged no benefit in the industry reporting multiple security/ index derivatives which provide no benefit from a market abuse detection perspective.

10. Given the bespoke nature of OTC derivatives, the members we represent therefore favour a method whereby a comprehensive cost benefit analysis would be conducted on the impact of reporting OTC derivatives. It is perceived by the industry that using ISINs or CFIs is an inappropriate approach to address this issue and would create significant cost which is perceived disproportionate to the benefit of reporting. This was highlighted by the industry with the potential costs for reporting exchange traded instruments, as communicated to CESR by FESE and the industry. This analysis would serve as a basis for further work between the industry and regulators on finding an appropriate solution at a reasonable cost for the industry.

We remain at your disposal for any further questions you may have regarding this issue,

Yours sincerely,

Kevin Milne
Chief Executive

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Companies

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