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Consultation on Trade Repositories in the European Union

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, *i.e.* more than 500 commercial, cooperative and mutual banks. They employ 500,000 people in France and around the world, and serve 48 million customers.

The FBF welcome the consultation of the CESR on trade repositories in the European Union and, besides the fact that we consider the trade repositories issue as essential in the current construction of a new market model for OTC derivatives and that we are particularly involved in the treatment of this issue, the French Banking Federation would like to stress out the following points:

- The French Banking Federation agrees with adopting a functional definition as proposed by the CESR. It understands trade repositories as a crucial tool to improve resilience, transparency and efficiency of the OTC derivatives markets and to have a clear view on exposures. It is an essential tool to know the positions taken by market participants on standardised and as well as non-standardised OTC products. We consider that the functional description of trade repositories should only refer to the function of collecting data supplied by one or both parties to a transaction (whether the transactions derived from centrally or bilaterally clearable transactions).
- It is observed that this work has made clear that legal constraints under contractual agreements particularly imply that the anonymity of trades cannot be breached unless both counterparties give their consent. Even if we agree on the fact that transactions on OTC derivatives (credit derivatives, interest rate derivatives and equity derivatives) must be subject to a “reporting” to trade repositories, we also consider that the disclosure and the availability must comply with the following requirements: strict respect of professional secret regulation, the disclosure of data must depend on the considered asset class and aggregated data only can be disclosed to public.

- In order to avoid too much variety of information sources, the reporting must be done only to one trade repository for each asset class (credit derivatives, forward interest derivatives and equity derivatives).
- Given the systemic importance of trade repositories, the French Banking Federation is in favour of the implementation of adequate oversight standards enabling to address the specific risks related to the management of repository activities (e.g. operational risk, governance, transparency, legal risk). Main regulatory issues affecting trade repositories are currently under consideration within the process for reviewing the CPSS/IOSCO recommendations for Security Settlement Systems and Central Counterparties. This work represents a valuable source for achieving fundamental promotion of harmonisation and improvement of safety and efficiency in post-trading, and in the very segment of trade repositories.
- For operational efficiency, the French Banking Federation supports that:
 - reporting on each OTC asset class is done to only one trade repository;
 - for each asset class, market participants report the same set of data;
 - reporting to trade repositories is based on open, global, industry-developed, harmonised standards;
 - information to the wider public is made available in aggregated and anonymous data whereas supervisors are given access to the necessary information to enable them to fulfill their responsibilities;
 - disclosure of data to interested parties is made compliant with a globally agreed due process.
- The French Banking Federation welcomes the recent European Commission's announcement to encourage the creation and operation of European-based trade repositories if European regulators are not given unfettered access to complete global information. We also strongly support that access to the decision-making bodies of TRs must not be unduly restricted and banks should be able to participate to the definition of governance.

In the end, the French Banking Federation would like to recall that French banks are particularly active on the equity derivatives market and are considering the possibilities of a trade repository on these products. Besides, the possibility of a “systemic” trade repository containing all valuated positions of markets participants should be considered for the visibility of regulators.

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 trade repository do you consider essential?**

The French Banking Federation agrees with adopting a functional definition as proposed by the CESR. It understands trade repositories as a crucial tool to improve resilience, transparency and efficiency of the OTC derivatives markets and to have a clear view on exposures. It is an essential tool to know the positions taken by market participants on standardised and as well as non-standardised OTC products.

We consider that the functional description of trade repositories should only refer to the function of collecting data supplied by one or both parties to a transaction (whether the transactions derived from centrally or bilaterally clearable transactions). Thus, trade repositories must only be used to determine, thanks to aggregated data, the positions of the counterparties.

Besides, it is precisely in this perspective that regulators and industry decided to use trade repositories.

Therefore, we are not in favour to a large definition of trade repositories which would include, besides the functions of collecting data, some additional services such as trade life cycle event management, trade processing services, central settlement, electronic novation and affirmation, or portfolio compression. Moreover, any large definition of trade repositories, inspired by the current functions of the “TIW”, would unquestionably give this latter unjustified advantage.

In case there is a single trade repository in a given market, open access should be granted to all potential users. In addition, in such a case, its possible offer of complementary functionalities (be they provided directly by the trade repository or by other entities of the group to which it would belong to) may induce in practice a dependency on the trade repository as concerns such complementary functionalities as well, both for market participants and other market infrastructures such as CCPs. In this case, it may be appropriate to envisage a regulatory framework which ensures that participants and infrastructures are not necessarily dependent on the services offered by the trade repository beyond its core function.

This said, we do not consider that the definition of trade repositories should refer to “golden copies”. As being only a “reporting” tool, trade repositories should not necessarily become the place where would be stocked all “official” copies.

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.

It is observed that this work has made clear that legal constraints under contractual agreements particularly imply that the anonymity of trades cannot be breached unless both counterparties give their consent.

Any disclosure of data must necessarily be operated with strict regards to any enforced national regulation on the professional secret. Professional secret and also data confidentiality (particularly those related to clients) must be taken into account by regulators.

Then, the French Banking Federation considers that data which must be disclosed must depend on the considered asset class. The example given by CESR of the information to disclose regarding CDSs does not seem applicable for other asset classes (credit derivatives, interest rate derivatives and equity derivatives). Hence, we consider that regulators could work together with the financial industry to define, asset by asset, the information that must be disclosed.

About the accessibility of data by the public, we agree that the public may feel a need to access to some data, as long as they are aggregated.

LOCATION OF A TRADE REPOSITORY

Do you see a need for establishing trade repositories 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.

The French Banking Federation welcomes the recent European Commission's announcement to encourage the creation and operation of European-based trade repositories if European regulators are not given unfettered access to complete global information.

We also strongly support that access to the decision-making bodies of TRs must not be unduly restricted and banks should be able to participate to the definition of governance.

LEGAL FRAMEWORK FOR 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.

Given the systemic importance of trade repositories, the French Banking Federation is in favour of the implementation of adequate oversight standards enabling to address the specific risks related to the management of repository activities (e.g. operational risk, governance, transparency, legal risk).

Main regulatory issues affecting trade repositories are currently under consideration within the process for reviewing the CPSS/IOSCO recommendations for Security Settlement Systems and Central Counterparties. This work represents a valuable source for achieving fundamental promotion of harmonisation and improvement of safety and efficiency in post-trading, and in the very segment of trade repositories.

The French Banking Federation understands that establishing a harmonised framework applicable to trade repositories is part of the policy actions that the European Commission intends to take in 2010 to strengthen the safety of derivatives market.