

ZENTRALER KREDITAUSSCHUSS

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN • BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN • DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

Mr Carlo Comporti
Committee of European
Securities Regulators (CESR)
11 – 13 Avenue de Friedland
75008 Paris
FRANCE

10785 Berlin, 5 November 2009
Schellingstraße 4
Tel.: + 49 (0) 30/20 21 – 1610
Fax: + 49 (0) 30/20 21 – 19 1600
Dr. La / sk

Response to the CESR Consultation Paper on Trade Repositories in the European Union

AZ ZKA: EG-INV-RE

AZ BVR: EG-INV-RE

Dear Mr Comporti,

We are grateful for the opportunity to comment on CESR's consultation paper "Trade Repositories in the European Union". Please find enclosed our comment on the consultation paper. Please feel free to contact Mr Diedrich Lange in case of any queries.

Yours sincerely,

on behalf of the Zentraler Kreditausschuss
Bundesverband der Deutschen
Volksbanken und Raiffeisenbanken e.V. BVR
National Association of German Cooperative Banks



Gerhard Hofmann

by proxy

Dr. Diedrich Lange



Enclosure

ZENTRALER KREDITAUSSCHUSS *

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN • BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN • DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

Response to the CESR Consultation Paper on Trade Repositories in the European Union

November 2009

* The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the *Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR)*, for the cooperative banks, the *Bundesverband deutscher Banken (BdB)*, for the private commercial banks, the *Bundesverband Öffentlicher Banken Deutschlands (VÖB)*, for the public-sector banks, the *Deutscher Sparkassen- und Giroverband (DSGV)*, for the savings banks financial group, and the *Verband deutscher Pfandbriefbanken (vdp)*, for the mortgage banks. Collectively, they represent more than 2,200 banks.

General Observations

We welcome the opportunity to comment on CESR's Consultation Paper. Before responding to the individual questions we would like to underline our general support for the initiative to establish Trade Repositories (TR) for all major OTC asset classes. Having said that, however, we believe that international coordination is of paramount importance, in particular in order to prevent a situation where market participants are forced to tie themselves to several TRs for a single asset class.

Furthermore, the considerable accomplishments achieved by the market participants and the further industry initiatives already underway in this area should be duly taken into account. For example, a number of dealers and buy-side participants have already entered into a commitment to record all trades of CDS, interest rate derivatives and equity derivatives not cleared through a CCP, starting on 17 July 2009, 31 December 2009 and 31 July 2010 respectively.¹

1. 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?**

A careful distinction should be made between the core tasks of the trade repository and its additional functions. The basic function of a TR consists in reporting and forwarding collected data to the competent authorities. Potential additional functionalities for lifecycle handling that go beyond this (such as matching or affirmation) are not essential. Unless they are already offered by CCPs or DTCC Trade Information Warehouse, such additional functionality of a full-scale data warehouse may be beneficial for certain products, such as CDS. Here, however, it is necessary to bear in mind that these additional functions involve a higher implementation effort than unilateral reports. The decision on the exercise of additional functions should therefore be taken on the basis of the TR users' specific requirements. At least if the use were to be made mandatory, it would need to be taken into account that additional mandatory functionalities could conflict with the objective to capture all transactions, in particular non-standardised transactions. This is because additional features regularly presuppose a certain degree of standardisation.

¹ Please see <http://www.newyorkfed.org/newsevents/news/markets/2009/ma090602.html> for more information.

Trade secrets of the counterparties need to be protected. Transaction data should therefore remain confidential and should not be made available to the public and other market participants.

Combining the functionality of a TR with that of a CCP does not make sense unless all products are CCP-eligible. Especially non-standardised products will, however, not be eligible for CCP-Clearing. Consequently, transactions involving non-standardised products would be excluded from the relevant combined TR/CCP.

2. 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.

Only the regulator should have access to data on individual derivative contracts, or data which allows insight into the identity of the contractual parties and specific commercial terms of the transaction. But even with regard to data accessible by regulators, existing legal restrictions need to be observed. In particular, all limitations under applicable data protection and privacy laws regarding the transfer of data, especially any personal data, across jurisdictional borders need to be respected.

Serious concerns would arise if detailed data on individual transactions were to be provided to infrastructure providers, market participants, or the general public (see above). Consequently, access of the general public should be limited to aggregate data (on regular basis). Such aggregate data should not contain any sensitive details. The market participants should only have full access to their own transaction data and the aggregate data made available to the general public.

In this connection we see no real need to distinguish between the various asset classes.

On the other hand, regarding the scope of market participants that would have to report to a TR, in order to obtain a representative overview of the market a differentiation of asset classes may be necessary. While financial institutions account for the large majority of the market for CDS this does not hold for interest or commodity derivatives.

Do you agree that trade repositories should provide adequate processes to ensure the reliability of the data provided? How could reliability be ensured?

The reliability of the trade repository data is, of course, a key objective. One way to ensure reliability of the data would be the definition of harmonised minimum standards for the manner in which data is to be reported to a TR. However, in this connection it is necessary to limit the complexity of such standards in order to retain the requisite level of flexibility, so that such standards do not act as *de facto* barriers to data reporting.

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.

No, we do not see any other entities with legitimate information needs with regard to OTC derivative trades recorded in a trade repository.

3. 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.

Of course, compliance with the legal requirements of the member states (specifically in the area of privacy and data protection laws) as well as the transparency vis-à-vis and the access rights of European regulators need to be ensured. However, the need for a separate European parallel solution should only be discussed if such compliance with the laws of the member states as well as access by European regulators to a TR located outside of the EU cannot be attained.

From an operational perspective, there would be no need to establish a TR in Europe if a TR already exists elsewhere. Rather, it should be avoided that two or even more TRs will be responsible for the same asset class. In fact, the existence of multiple TRs for one asset class would conflict with the underlying rationale behind the establishment of TRs. This is due to the fact that each TR would only be able to give a partial insight into the market. In addition, the obligation to report a transaction to multiple TRs may result in incomplete or even contradictory data.

However, in the event the establishment of more than one TR for the same asset class cannot be avoided, it would at least be of paramount importance to ensure the interoperability of these TRs.

As to the issue of contingency planning, this depends primarily on the profile of the TRs and the additional services they offer.

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 "point of reference" should not be the underlying. Instead the market participants should be the decisive factor. In the aforementioned solution, the trades would be reported to the central authority/authorities in any event. DTCC and Trioptima do not take the underlying but their users as their point of reference.

4. LEGAL FRAMEWORK FOR TRADE REPOSITORIES

Do you think there should be harmonised EU requirements for the regulation and supervision of trade repositories?

Yes, trade repositories should be subject to harmonised EU requirements. In our view, this is an indispensable prerequisite. Provided the TR is not itself a EU regulatory authority (or an institution that is directly connected to such an authority), such a TR needs to be subject to comprehensive supervision and subject to strict confidentiality requirements with regard to the data received. The applicable regulations must also ensure that the data is only made available to regulators in accordance with predetermined rules and regulations.

Only a fully harmonised regulatory and supervisory framework can prevent a race to the bottom of the "least regulated" location.

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.

Harmonization and standardisation are market-driven. Regulators and industry organizations set these standards. The industry needs such standards to continually improve transaction processing (including the increased use of electronic transaction processing), which in turn serve the general objectives of improving reliability, efficiency, liquidity and transparency. Regulators should therefore adopt standards in cooperation with the industry. As has already been pointed out above, they should seek to ensure a harmonised set of minimum requirements and a uniform delivery protocol for reports which, in turn improves the reliability of the data.