

European Securities and Markets Authority

Via electronic submission

DTCC Data Repository Limited responses to ESMA's Consultation Paper - Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories (ESMA/2012/379) dated 25th June 2012 (the "Consultation Paper")

DTCC Data Repository Limited ("DDRL") would like to thank the European Securities and Markets Authority ("ESMA") for providing this opportunity for industry participants to comment on the proposals set out in the Consultation Paper. DDRL is pleased to offer its views based on its experience as a trade repository ("TR") for credit, equity and interest rate derivatives, containing transaction details relating to all relevant EU Markets. DDRL is regulated by the UK Financial Services Authority. From October of 2012, DDRL will also operate an FX repository which is currently in development with guidance from AFME and its members. The Depository Trust & Clearing Corporation ("DTCC") also launched in January 2012 a Eurozone company, Global Trade Repository for Commodities B.V., in partnership with the European Federation of Energy Traders (EFET) and since 2006, has operated the Trade Information Warehouse ("TIW"), a service operated by (along with DDRL) a wholly-owned U.S. subsidiary of DTCC regulated by the Federal Reserve Bank of New York and the New York State Department of Financial Services, for credit derivative ("CDS") transactions. TIW provides both post-trade lifecycle processing and trade repository services for an estimated 98% of the global OTC CDS market.

Parallel to the development of individual repositories, DTCC offers an internet based secure portal service which provides reporting entities and the global regulatory community with a single point of access to all underlying asset class repositories operated by the DTCC and its subsidiaries and affiliates: CDS, equity, interest rate, commodity and FX derivatives. This allows reporting entities and regulators to leverage existing reporting infrastructure, easing the burden, cost and complexity of connecting to multiple repositories.

Currently, the family of repositories operated by the DTCC and its subsidiaries receive 91 million transaction reports per month and the portal service is accessed regularly by in excess of 40 regulatory authorities from 20 countries.

As a global TR operating in all five derivative asset classes, our comments are focused on part V together with Annexes V and VI of the Consultation Paper, relating to the proposals for TR Requirements.

The main objectives of our response are:

- To promote transparency of derivative data for both regulators and market participants
- To promote the adoption of globally agreed industry standards and the implementation of global reporting templates where feasible

- To promote a level playing field in the operation of TRs independently from other infrastructure, identifying user choice of reporting venue as a key right of market participants
- To request that the collateral reporting requirements are phased-in after the reporting obligation for OTC and listed derivatives has become effective
- To avoid data fragmentation and duplication of reporting

We look forward to assisting ESMA in delivering an efficient reporting framework.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Stewart Macbeth". The signature is fluid and cursive, with the first name "Stewart" being more prominent than the last name "Macbeth".

Stewart Macbeth

President and CEO, DTCC Derivatives Repository Ltd.

General Comments

DDRL agrees that ESMA is correct in seeking to align its technical standards with those proposed by CPSS-IOSCO. DDRL is strongly in favor of coordinated multinational and cross FMI standards including the adoption of common reporting templates across all jurisdictions. DDRL appreciates ESMA's desire to increase the level of granularity in the international standards and agrees this will facilitate the development of common global reporting templates and solutions.

In response to ESMA's request for quantitative feedback with respect to the costs of implementation of the technical standards, DDRL notes that the financial cost of developing one or more TRs for multiple countries and asset classes is virtually impossible to state with precision as rules by country and region are not yet final, and in some cases, not even proposed at any level of specificity. What can be stated is that economies of scale should be the driving force behind the development of a global OTC derivative trade reporting regime. Developing a single global TR for all derivative asset classes that can be accessed by market participants, regulators and the public is the most cost efficient way to provide each of the stakeholders with the greatest value at the least cost. If the development of TRs were to become fragmented along country, asset class and reporting party lines, costs and complexity would increase dramatically while efficiency and ease of use would decrease.

TRs should serve an impartial, utility function. As an aggregator and collector of derivative transaction data supporting regulatory oversight and supervisory functions, it is critical that a TR's public utility function be separated from potential commercial uses of the received data. Therefore DDRL believes that ESMA should generally prohibit TRs from using data reported to them for commercial purposes, even if the TR providers also provide ancillary services to counterparties, and should require TRs to demonstrate strict impartiality in making data available to, or receiving data from, other providers, including affiliates of TRs. Further, the ability of a TR to make commercial use of data should be based on the principle of user control because such data is owned not by the TR but by the counterparties who reported the data. A TR should allow access to that data in accordance with the requests of the counterparties and without fees that are disproportionate to any associated costs. This requirement is identified in CPSS-IOSCO's Principles for Financial Market Infrastructures (Sections 3.18.3 and 3.18.4), and must be supported by counterparties having full freedom to select the TR through which to discharge their reporting obligation.

Specific Comments

Sections 244/245

DDRL strongly supports ESMA's desire to propose technical standards that are consistent with international standards and the consideration of CPSS-IOSCO's Principles for FMI in determining these standards. DDRL further agrees that the level of granularity for data reporting must be sufficiently stringent to facilitate EU based TRs being able to operate on a global basis. In this regard, DDRL recommends that ESMA consider the detail of the data that is required by other jurisdictions, especially Japan and the United States where these requirements have been finalized, to assist in moving towards a consistent global reporting template, which will facilitate efficient and effective reporting by counterparties and the sharing of data globally with the regulatory community.

Section 247

With respect to the difficulty in quantifying the cost of compliance, it should be noted that the precise costs to establish and connect to TRs are difficult to estimate without finalized requirements. Once those requirements are publicly disclosed, firms and service providers will be able to calculate their development need in excess of that already completed for jurisdictions where the reporting requirements have already been finalized.

Section 252

DDRL believes that whilst both counterparties to a transaction should report, either party must be allowed delegate the act of reporting to the other or to a third party, as identified in the level 1 EMIR text. Where reporting is delegated, the decision about which party reports should be made at the time of or prior to execution. This will enable efficient reporting methods to be developed, and reduce the burden on parties when their counterparty has high automation levels.

Whilst a reporting counterparty may utilize a third party to assist with its reporting obligation, the selection of a TR venue should remain the responsibility of the reporting counterparty given the fact that this counterparty retains the obligation to report and is ultimately the service user, so must be satisfied with both the service and data security level provided by the TR, as well as the cost of the TR service.

Sections 253/254/256

DDRL agrees that TR data can be used for achieving the G20 objectives of transparency, protection against market abuse and systemic risk mitigation but DDRL believes that it should also be used to meet the post-trade reporting obligations identified under MiFID/MiFIR. In furtherance of that objective DDRL recommends that ESMA continues working toward harmonizing the data requirements of EMIR and MiFID/MiFIR and we would hope to see clear guidance on this in the RTS so that TRs can be sure that the data requirements for EMIR comply with similar obligations under MiFID/MiFIR. Such reuse of data will serve to increase efficiency in reporting and decrease reporting costs for both the industry and the regulatory community.

Section 255

DDRL agrees that data delivered to relevant authorities should not only be available via a portal based “pull” mechanism but also via a “push” mechanism whereby reports are proactively sent directly to the relevant national competent authorities by a TR. DDRL is prepared to offer such reporting mechanisms and has already developed both a “push” and “pull” functionality.

Section 258/264/265

DDRL fully supports the use of the ISO17442 standard, globally approved for the Legal Entity Identifier (“LEI”). If a global LEI solution is not fully developed in time for compliance with EMIR, DDRL recommends use of an interim solution, to be defined by ESMA, which is compatible with a global solution to be defined by the FSB. DDRL/DTCC would be very happy to work with ESMA on the development of such an interim solution should this be required.

Section 260-262

DDRL agrees that ideally the economic beneficiary of a derivative transaction, where this differs from the counterparty, should be identified at the time the transaction is first reported. However, there are scenarios where the ultimate economic beneficiary may not be known to the counterparty at the time of reporting. This can occur, for example, where an asset manager has executed a transaction on behalf of its clients but the allocations are communicated post-execution, or even post-clearing.

DDRL recommends, therefore, that the standards allow in such cases for a transaction to be reported against an asset manager as counterparty but indicating that the transaction is pending allocation. Once allocations have been completed, each allocated trade and the ultimate economic beneficiary thereof, would be reported cross-referencing the transaction identifier to the initially reported trade. More broadly the issue of beneficiary or chain of beneficiaries should be dealt with through counterparty reference data which can identify parent undertakings or ownership of counterparty entities.

Section 263-268

DDRL supports the widest possible use of global industry codes as stated in the draft standards. In addition, DDRL will support the LEI and Unique Product Identifier (“UPI”) when their current developments are complete. DDRL believes that adopting a central, common standard and building on existing standards and infrastructure where appropriate, should be the recommended approach.

DDRL strongly encourages ESMA to support and adopt the industry standards established in this area and allow the leveraging of existing infrastructure.

Section 274

DDRL believes the clearing obligation is better addressed by a review of trade attributes within the TR rather than explicit reporting by parties (full analysis may involve several jurisdictions rules with respect to a clearing obligation, depending on the registration of the parties and agents); similarly, intra-group trading may be identified by the trade repository. Minimising local compliance data fields will significantly reduce the implementation burden as core transaction data is already subject to high levels of automated or straight-through processing (in proprietary or vendor software offerings)

that can be adapted. Additionally, the proposed form of compliance data is location specific against a backdrop of a global reform agenda and where a significant proportion of trades will have multiple reporting obligations, and potentially be subject to multiple compliance rules.

Sections 275-280

DDRL is broadly supportive of the proposed data elements described in the draft rules. DDRL believes that the proposed data elements will provide supervisory bodies with a sufficient level of data to achieve their primary objectives of improving market transparency, monitoring and mitigating systemic risk and protecting against market abuse without imposing an unnecessary burden upon market participants to source, report and reconcile large amounts of supplementary data does not necessarily lend itself to achieving these objectives.

DDRL believes that it is very much in the interests of both the market participants and all relevant regulatory bodies to adopt common, standard reporting templates that can be used across multiple jurisdictions. The DTCC Global Trade Repository ("GTR") already has in place a set of common message templates that provide support for a single trade submission to be used to meet the reporting requirements of multiple regulatory jurisdictions. These have been directly derived from open standard industry message formats and this work has included incorporation of new attributes into these standards.

In addition, DDRL and its users are keen to ensure that reporting can include full trade details in many instances, rather than abridged forms. Where the regulatory information required is to a more generic or higher level standard, participants may wish to be able to send further detail so that common standards can be used across multiple regulatory reports, and align strongly with operational processing, including the use of ancillary services offered by the TR provider or a third party.

While the existing GTR templates already incorporate the majority of the data elements proposed in the consultation paper, there are some notable exceptions such as collateral data and beneficial owner information. DDRL would welcome the opportunity to work directly with ESMA and in collaboration with other TR providers to define common message formats and data standards in these areas. Achieving this harmonization in message templates across different TR providers would further aid and support the EMIR requirement for reconciliation of data across multiple TRs in order to reduce duplicative reporting. In this regard, DDRL recommends the phasing-in of these requirements after the implementation of the reporting obligation for OTC and Listed derivatives. DDRL would be happy to work with ESMA and the industry on agreeing such a phase-in timetable.

Finally, in reviewing the ESMA technical standard related to commodities, there is reference to the need to collect a field referenced "Border". DDRL would appreciate clarification from ESMA on the precise meaning of this term.

Sections 281-286

Mark-to-market information is used internally in firms every day in risk, finance, collateral and client valuations processes, and hence DDRL believes it would be possible for a TR to capture this information relatively easily. It must be understood, however, that these

valuations are designed to a materiality level for a specific purpose and can be subject to portfolio-level adjustments made on a delayed basis. However, DDRL believes the daily information would provide useful information to indicate levels of exposures.

Broadly DDRL believes a similar approach can be taken for collateral reporting as well to reduce costs for the industry while maintaining the transactional level detail. As above, DDRL recommends that collateral reporting requirements are phased-in post the implementation of the OTC and Listed derivative reporting requirements and would be very happy to work with ESMA on identifying the requirements for collateral reporting to ensure a seamless implementation.

Sections 287-289

Third parties will be critical to the provision of efficient and high quality reporting. Reporting entities should be held accountable for ensuring data is reported accurately and in a timely fashion to the TR and delegation to a third party service should not discharge them of such obligation. However, DDRL disagrees with the proposal that third parties need to guarantee protection of the data and compliance with the reporting obligation the same way that the counterparty appointing them is required to, as this obligation should remain with the reporting entity. Authorities should be able to address delays through the reporting entities.

DDRL also strongly recommends that a third party such as a CCP should not impose a mandatory requirement on a counterparty to use its affiliated services such as a TR. Specifically, the bundling of trading and/or clearing services with TR services should not be permitted.

Sections 290/291

See comments on Sections 275-280.

Sections 292/293

DDRL agrees that it would be simpler and more efficient for TRs to reconcile transactions submitted by counterparties post-submission than for counterparties to reconcile prior to submission. In practice, where transactions are received through an existing confirmation or matching service, a TR should be able to deem such submissions as automatically reconciled and verified by both parties.

DDRL believes that further work is needed to establish appropriate reconciliation procedures between repositories and that the resolution of items through a multiple TR infrastructure may be difficult, including even the identification of the appropriate second TR. It will be key that data security is maintained and that large data sets are not exchanged without the confirmation that the second report was in fact made to the other TR. Firms already use a significant number of reconciliation tools to ensure the integrity of their data, notably including electronic confirmation matching systems, and should therefore be encouraged to establish strong reconciliation controls with TRs for their data. It is important that firms do not rely on reconciliation between TRs as opposed to their own primary controls. In all cases, the use of Unique Trade Identifiers ("UTI") must be encouraged to facilitate this.

As stated in our responses to Sections 252 and 287/289 above, DDRL believes the counterparties should retain the right to decide to which repository they will report and that reporting should be to the same TR.

With respect to cases where there are cross border reporting obligations, DDRL believes the best solution would be a single TR across borders that can accept and report data in compliance with the needs of various jurisdictions. Absent a singular TR, DDRL believes the only way to effectively reconcile across TRs would be through the use of a UTI.

In addition to providing the ability for parties to a trade to report with a common Unique Transaction Identifier, DDRL has also incorporated the ability to pair trades using the exchange of 'Our Ref Your Ref protocol' identifiers as described in section 3.2 to of the GFMA document at the following URL:

[http://www.gfma.org/uploadedfiles/initiatives/foreign_exchange \(fx\)/fx-usi-20120601.pdf](http://www.gfma.org/uploadedfiles/initiatives/foreign_exchange_fx/fx-usi-20120601.pdf)

Sections 294-296

Recent experience in the United States shows that the time required to achieve authorisation for a TR is directly related to the complexity of the proposed TR service.

DDRL requests that ESMA take appropriate action to ensure that the time frames within which authorisation is to be granted take account of the broad range of TR business models, from simple regional to complex cross border, and allows sufficient time for authorisation of the whole range of TRs to be completed.

For example, ESMA might identify a fixed period such as 1st January 2013 to May 31st 2013, during which it will commit to authorising all TRs by the same date, May 31st 2013, assuming each TR requesting authorisation submits its full authorisation package by Jan 1st 2013.

In relation to the timing of the implementation of the reporting obligation, DDRL requests that ESMA clarifies that the obligation to report will only apply to contracts outstanding at the time the reporting obligation comes into force. This was discussed at the recent ESMA hearing in Paris and DDRL believes that ESMA should provide formal clarification given that neither EMIR nor the draft standards are clear on this point.

Section 298/299

DDRL believes that ESMA should require applicants to provide balance sheet and statement of income and expenses along with business plans only on an annual basis and not for the suggested three years.

Annex V - Draft regulatory technical standards on trade repositories

Article 5, Cleared Trades

(1) At the recent hearing in Paris, ESMA confirmed verbally that lifecycle events will be captured by the 'modification' element of the reporting obligation. Furthermore, there has been confusion in the industry about whether 'novation' should be considered a modification event.

DDRL agrees with ESMA and the draft RTS that all lifecycle events including novation should be considered to be modifications and further, that these should be reported to the original TR. DDRL would appreciate ESMA clarifying this point in the final standards.

Chapter 2, Registration

Article 2, Identification, legal status and class of derivatives

(c) DDRL requests clarification of the phrase “the types of derivatives for which the trade repository is applying to be registered”. DDRL believes that a TR should accept reporting for the full range of trades within an asset class and not be allowed to select certain higher volume products to maximize income. Such ‘cherry picking’ will not allow the creation of an economically viable solution for more complex products within each asset class and will consequently add complexity to all clients’ usage of the service

Chapter 1, Access to trade repositories held data

Article 3, direct access by relevant authorities

(9) DDRL believes that the requirement to “provide a relevant ESCB member with access to position data for derivatives contracts in the currency issued by that member” may need more detailed definition and only practically relate to currency or interest rate positions, settlement or interest rate related information and not cover detailed derivatives terms. DDRL believe that this will be better informed by the CPSS-IOSCO work on regulatory access to TR data.