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Committee on Payment and Settlement Systems
Bank for International Settlements
Centralbahnplatz 2
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Technical Committee
International Organization of Securities Commissions
C/Oquenda 12
28006 Madrid
Spain

Ladies and Gentlemen:

On behalf of DTCC Deriv/SERV LLC (“Deriv/SERV”), a subsidiary of The Depository Trust & Clearing Corporation (“DTCC”), we appreciate the opportunity to comment on the consultative report on “Principles for Financial Market Infrastructures” (the “Consultative Report” and the principles as set forth in the Consultative Report, the “Proposed Principles”) published by the Committee on Payment and Settlement Systems (“CPSS”) and the Technical Committee of the International Organization of Securities Commissions (“IOSCO” and, together with CPSS, the “Committees”).

While DTCC has several subsidiaries that are financial market infrastructures (“FMIs”), these comments focus solely on those aspects of the Consultative Report related to trade repositories (“TRs”), as DTCC believes that TRs may present unique infrastructure management issues.¹ Deriv/SERV operates The Warehouse Trust Company LLC (“Warehouse Trust”), a TR based in the U.S. that maintains a centralized electronic record of transaction data for credit default swaps (“CDS”). Warehouse Trust also provides ancillary services for the management of trade life-cycle events and the downstream trade-processing of CDS contracts. Additionally, Deriv/SERV operates DTCC Derivatives Repository Ltd. (“Derivatives Repository”), a TR based in the U.K. that acts as an equity OTC derivatives repository and also maintains an electronic record of transaction data for CDS, identical to the centralized electronic record that Warehouse Trust maintains in the U.S.

¹ DTCC is simultaneously filing a separate comment letter to address broader issues relating to non-TR FMIs.

Deriv/SERV supports both the efforts of the Committees to advance an international framework for the regulation of FMIs and efforts to improve consistency in oversight, promote robust risk management, and improve the ability of regulators to monitor risk that build upon the Proposed Principles.² The application of harmonized global standards to the important role played by TRs will limit the potential for market distorting arbitrage between jurisdictions, promoting transparency and stability in the marketplace. As noted in introductory paragraph 1.14 of the Consultative Report, “[b]y centralising the collection, storage, and dissemination of data, a well-designed TR that operates with effective risk controls can serve an important role in enhancing the transparency of information to relevant authorities and the public, promoting financial stability, and supporting the detection and prevention of market abuse.”

As the Consultative Report recognizes, TRs possess fundamental differences from other FMIs. Notably, many of the risks inherent in the operation of other FMIs, such as credit and liquidity risk, are not present in the operation of TRs. While Annex D of the Consultative Report implicitly recognizes these differences by denoting those Proposed Principles and Key Considerations that are not applicable to TRs, Deriv/SERV believes that the final report should provide greater clarity regarding the specific standards applicable to TR operations.

In an effort to assist the Committees in implementing effective international standards governing the operations of TRs, Deriv/SERV offers the below specific comments on the Proposed Principles.

PRINCIPLE 2: GOVERNANCE

An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

Deriv/SERV supports the approach of Proposed Principle 2 in promoting the safety and efficiency of FMIs through the advancement of broad governance principles. Given the distinct functions served by TRs and the regulatory environment in which they operate, Deriv/SERV appreciates that Proposed Principle 2 is not overly prescriptive and interprets this Proposed Principle to allow a TR a board of directors that is broadly representative of market participants who are users of the TR’s services. Broad user representation on a TR’s governing board is necessary to assure that non-regulatory uses of mandatorily reported data remain in the hands of the trade counterparties.

PRINCIPLE 17: OPERATIONAL RISK

An FMI should identify all plausible sources of operational risk, both internal and external, and minimise their impact through the deployment of appropriate systems, controls, and procedures.

² These concepts were recently recognized by U.S. regulators. See Board of Governors of the Federal Reserve System, Securities and Exchange Commission and Commodity Futures Trading Commission Report, *Risk Management Supervision of Designated Clearing Entities* (Jul. 2011).

Systems should ensure a high degree of security and operational reliability, and have adequate, scalable capacity. Business continuity plans should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale disruption.

Deriv/SERV supports the approach set forth in Proposed Principle 17 but suggests that for a TR, operational risk contingency should include consideration of legal risk, as risk related to legal access to data may be as disruptive as that relating to the physical infrastructure. Global regulatory access to TR data must be continuous and comprehensive to ensure that the TR serves an important role in enhancing the transparency of information to relevant authorities and the public, promoting financial stability, and supporting the detection and prevention of market abuse.³ Therefore, TRs must work together with the relevant global regulators to minimize the potential impact of developing legal constructs that could erect barriers to global access to market data.

PRINCIPLE 18: ACCESS AND PARTICIPATION REQUIREMENTS

An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

Deriv/SERV fully supports the proposition set forth by Explanatory Note 3.18.3, which states that “[f]or a TR, ensuring fair and open access is very important since there may be only one TR for a particular market and a wide set of stakeholders may need effective access to the TR’s data warehousing services, both to store and retrieve data. Access is critical for participants storing trade information in the TR and for platforms that may submit transaction data on behalf of participants, including exchanges, electronic trading venues, and confirmation or matching service providers. In addition, other FMIs or platforms that offer ancillary services may need to obtain trade information from the TR to use as input.”

To further advance the effectiveness of the proposition outlined in Explanatory Note 3.18.3 Deriv/SERV advocates for the adoption of the following principles:

- Market participants must have the right to contract separately for trading, clearing, and repository services.
- While market participants should be able to enjoy the economies of shared platforms (*e.g.*, central counterparty recordkeeping doubling as TR recordkeeping where practical), the allocations of platform operating costs between services cannot be arbitrary. Allocations of the costs of ongoing shared services and generic development need to have a rational basis.
- In the context of TRs, upstream providers should not be permitted to refuse or delay linkages with TRs who employ open access principles, such as publicized application programming

³ Introductory paragraph 1.14 of the Consultative Report recognizes that “[b]y centralising the collection, storage, and dissemination of data, a well-designed TR that operates with effective risk controls can serve an important role in enhancing the transparency of information to relevant authorities and the public, promoting financial stability, and supporting the detection and prevention of market abuse.”

interfaces, standard testing procedures, widely used commercially available links, and others, when there is customer demand for such linkages. Likewise, all TRs should follow open access principles and deal with all upstream providers on an impartial basis, regardless of whether they are affiliated or identical with such providers.

Explanatory Note 3.18.4 indicates that “a TR should provide terms of use that are commercially reasonable and aim to support interconnectivity with other FMIs and service providers, where requested, so that competition and innovation in post-trade processing are not impaired as a result of the centralising of recordkeeping activity.” Since all swaps, whether cleared or uncleared, must be reported to TRs, Deriv/SERV believes that TRs should serve an impartial, industry cooperative function.

Further, Deriv/SERV supports the requirement that TRs permit market participants to access specific services offered by the TR separately. This is consistent with Explanatory Note 3.18.4, which specifies that a “TR should also not develop closed, proprietary interfaces that result in vendor lock-in or barriers to entry with respect to competing service providers that rely on the data maintained by the TR.”

PRINCIPLE 24: DISCLOSURE OF MARKET DATA

A TR should provide timely and accurate data to relevant authorities and the public in line with their respective needs.

Deriv/SERV supports the framework for the disclosure of market data set forth in Proposed Principle 24. As noted in introductory paragraph 1.14 of the Consultative Report, an important TR-function “is to provide information that supports risk reduction, operational efficiency, and cost savings for both individual entities and the market as a whole Since the data maintained by a TR may be used by a number of stakeholders, the continuous availability, reliability, and accuracy of such data is critical.”

Deriv/SERV has consistently advocated for the implementation of effective data disclosure measures to enhance market transparency through the provision of timely, accurate, and complete information, including those principles advanced by the OTC Derivatives Regulators’ Forum.⁴ In this regard, Deriv/SERV believes the framework envisioned by the Consultative Report should build on those principles advanced by the OTC Derivatives Regulators’ Forum.⁵

⁴ See OTC Derivatives Regulators’ Forum, Trade Repository Functionality Outline (Nov. 17, 2010), *available at* <http://www.otcdrf.org/documents/traderepositoryfunctionalityoutline.pdf>.

⁵ In support of this proposition, Explanatory Note 4.5.6 of the Consultative Report provides that “[a]uthorities directly responsible for the regulation, supervision, and oversight of a TR that maintains data pertaining to other jurisdictions should coordinate with other relevant authorities to ensure timely and effective access to market data and establish an appropriate data access process that is fair and consistent with the responsibilities of the other relevant authorities. All relevant authorities should mutually support each other’s access to data in which they have a material interest in furtherance of their regulatory, supervisory, and oversight responsibilities, regardless of the particular organisational form or geographic location of a TR.”

Disclosure of data

As emphasized in Explanatory Note 3.24.2 regarding the disclosure of market data, “[a] TR should provide data in line with regulatory and industry expectations to relevant authorities and the public, respectively, that is comprehensive and at a level of detail sufficient to enhance market transparency and support other public policy objectives.” Deriv/SERV supports a global regulatory framework governing TRs that promotes the provision of complete and accurate information for market data in a timely manner, thereby protecting against the accrual of systemic risk in the market.

Regulatory authorities with a material interest⁶ should have direct access to TR data, with no requirement for (i) pre-approval or notification to the TR’s primary regulator; or (ii) distribution from that regulator. Further, inline with current data sharing protocols, TRs should not be required to enter into indemnification agreements prior to the sharing of data with appropriate regulatory authorities.

In addition, the primary regulator should not have preferential access to data, except as is necessary to fulfill its TR oversight responsibility, as access to data in the TR should be location agnostic and not preferential. Therefore, the primary regulator should not receive a feed of all the data in a TR, where a TR acts for several markets across a number of jurisdictions.

When data is disclosed publicly, the cumulative impact of such publication should be considered. Multiple providers publishing information have the potential to produce negative impacts unless the overlap of data is well understood and noted in disclosure. For example, if there are multiple TRs or trading facilities, with central counterparties publishing volume information, the same trade might be published many times (regulation may even require it). This could lead to a misinterpretation of the depth of the market. Similarly, when published by several providers net open interest in a position could, in aggregate, lead to a material overstatement of the open interest and participants’ assumptions of market depth. Ensuring that TRs provide these metrics publicly will help to formulate the view of TRs as the primary source for reporting and reduce the risk of misinterpretation of data.

Processes and procedures

Explanatory Note 3.24.3 indicates that a “TR should have processes and procedures to provide data to relevant authorities in a timely and effective manner to enable them to meet their respective regulatory mandates and legal responsibilities.” Deriv/SERV agrees with this mandate and believes that TRs need to possess the ability to provide (i) enforcement agents with necessary information on trading activity; (ii) regulatory agencies with counterparty-specific information about systemic risk based on trading activity; (iii) aggregate trade information for publication on market-wide activity and aggregate gross and net open interest; and (iv) a framework for real-time reporting and related dissemination.

⁶ See letter from OTC Derivatives Regulators’ Forum to the Warehouse Trust Company, dated June 18, 2010. Available at: http://www.dtcc.com/downloads/legal/imp_notices/2010/derivserv/tiw044.zip.

Information systems

Deriv/SERV supports the reporting framework outlined in Explanatory Note 3.24.4 of the Consultative Report. As set forth therein, “a TR should have robust information systems to provide accurate current and historical data. A TR should collect, store, and provide data to participants, authorities and the public in a timely manner and in a format that can facilitate prompt analysis. Data should be made available that permits both comparative and historical analysis of the relevant markets. The criticality of a TR’s or its market’s role should be a consideration in the frequency and speed with which data and other information are disclosed.”

To promote market stability and transparency, TRs must demonstrate an infrastructure that supports critical operational capabilities. Specifically, Deriv/SERV recommends that TRs operate on a 24/6.5 basis to reflect the global nature of the financial markets, process transactions in real-time, maintain multiple levels of operational redundancy and protect data security, and possess the ability to make data available to regulators in real-time. Further, Deriv/SERV believes TRs should leverage automation to the maximum extent possible to promote data quality. A failure to demonstrate robust resiliency, security and redundancy in operations should preclude an entity from operating as a TR.

Conclusion

We appreciate the opportunity to offer these comments on the Proposed Principles on behalf of Deriv/SERV. Should the Committees wish to discuss these comments further, please contact me at 202-457-5258 or msgreen@pattonboggs.com .

Sincerely yours,



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