Delivered Via Email

CPSS secretariat (cpss@bis.org)
IOSCO secretariat (OTC-Data-Report@iosco.org)

20 September 2011

Dear Sirs,

Re: Report on OTC derivatives data reporting and aggregation requirements

As solicited in the above consultative report, Argus Media Limited (Argus) is pleased to submit its comments to the CPSS and IOSCO secretariats for consideration as follows:

1. Section 3.4, Dissemination of OTC derivatives data to the public

Argus welcomes the measured choice of language in sections 3.4.1 and 3.4.2 which notes the need for public disclosure by TRs of "*adequate* information to promote the understanding of the functioning of OTC derivatives markets", that "a TR should disclose to the public, *where appropriate,* information on market activity, based on the scope of data it maintains" and that "the information publicly disseminated by TRs could include state data as well as event data, *if available and appropriate*" (Argus emphasis).

Argus believes that the IOSCO-CPSS report should contain further guidance, perhaps through identifying relevant principles, regarding the considerations to apply by relevant competent authorities when having regard to this "if appropriate" test.

In particular, Argus encourages IOSCO-CPSS to note that the "if appropriate" test implies the need for a careful calibration by the relevant competent authorities of combined aggregation and public disclosure requirements, likely on an asset class by asset basis. Argus believes this careful calibration is necessary in order to ensure that the combined aggregation and public disclosure requirements achieve their objectives without creating unintended market distortions and respecting the principle of proportionality such that the requirements do not go beyond what is necessary to achieve their objectives.

In its previous response to the IOSCO-CPSS consultative report of March 2011 on "Principles for financial market infrastructures", Argus has already highlighted its concerns that in OTC energy derivatives markets, a mis-calibration of combined aggregation and public data dissemination requirements on TRs could distort the existing competitive provision of post-trade price transparency services to market participants, as well as result in less orderly markets and greater overall systemic risk.

<u>Potential to distort existing competitive provision of services to market participants</u>

Argus believes it is important for IOSCO technical guidelines to recognise the potential for, and so seek to avoid creating, unintended market distortions in particular asset classes where there are already well-established independent reference sources of post-trade price transparency data, made available on a competitive and commercial basis.

For example, in energy markets there is a long-established competitive marketplace of Price Reporting Agencies (PRAs), whose commercial activities involve the collection and analysis of transactional and non-transactional data, and the identification and dissemination of prevailing market price data through the publishing of price assessments and indexes. PRAs collect data on a voluntary yet robust basis from market participants.

Therefore, in energy derivatives, there is the clear risk of mandatory public dissemination of data from TRs in the form of aggregated price indexes causing a significant market distortion in the provision of post-trade price transparency in these markets.

This point has been explicitly recognised by the Council of European Energy Regulators (CEER), in a report on a pilot trade repository project for power and gas trading in Europe[1]. European power and gas markets trade in physical forwards contracts which may be captured under financial instrument definitions and therefore subject to derivatives regulations. CEER noted in its report:

"Any solution [on public access to data] needs to strike a balance between the benefits of increased transparency, the very important issue of confidentiality of commercially sensitive information embedded in the trades *as well as the interests of information providers* and trading venues.

"As a result it appears appropriate to conclude that the energy trade database should be able to make available and/or report aggregated and significantly delayed trade data i.e. comparing monthly trade volumes on European markets to support a well-informed public discussion about appropriate market designs. Academic insight and progress would be best supported by providing on demand access to single trade information as is available for professional market participants requiring appropriate registration and legitimating procedures *in order not to interfere with the commercial activity of providing market intelligence*." (Argus emphasis)

For the avoidance of any doubt, Argus fully supports regulators' unfettered access to data held in TRs and notes the IOSCO-CPSS report's discussion of this in section 3.2. In the company's view, this is the primarily purpose of TRs.

Argus is also cognisant of the public policy argument that the public release of aggregated information from a TR can help address the issue of public confidence in the markets. This is precisely why Argus argues for a need to carefully calibrate, on an asset class by asset class basis, the obligations and restrictions on TRs to aggregate and publicly disseminate data.

For example, in energy derivatives Argus supports a level of aggregation, frequency and content of public reporting from a TR similar to the US Commodity Futures Trading Commission's weekly Commitments of Traders (COT) report[2]. This weekly COT report provides clear public visibility on volumes, positions and concentrations in commodity futures markets in the US, aggregated to meaningful categories of market participant. The COT report appears to be fully compatible with the guidelines established in sections 3.4 and 5.1 of the IOSCO-CPSS consultative report.

In Argus' view, the COT report's degree of aggregation and public reporting represents a well-calibrated regime appropriate to energy derivatives markets, and which would be appropriate for TRs collecting OTC derivatives data in this asset class. It provides important transparency to market participants and the wider public, enhances public confidence in the markets, while not causing a distortion to the long-established commercial marketplace of PRAs in energy.

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[1] CEER C11-WMF-11-03a, Final Report on Pilot Project for an Energy Trade Data Reporting Scheme, www.energy-regulators.eu

[2] www.cftc.gov/marketreports/commitmentsoftraders/index.htm

Potential for less orderly markets and greater overall systemic risk

In less liquid markets — which is a characteristic of many energy derivatives markets — there is an important technical argument that requiring TRs to publish daily price indexes derived from transactional data carries substantial risk of less orderly markets and increased systemic risk.

In less liquid energy derivatives markets such as European power and gas where trade is in physical forwards contracts, on any given day there will normally be contracts along the forward curve where no transactions are concluded. This is especially the case in far-forward contracts. For such contracts with no transactions concluded, determining prevailing market prices purely from transactional data — the dataset a TR will have available — is impossible.

So in less liquid energy derivatives markets, daily price indexes published by a TR from transactional data would inevitably contain price 'holes' or gaps. They would give incomplete and so misleading price signals to the market, and make accurate mark-to-market, VAR and counterparty exposure impossible to correctly calculate. Overall system risk would therefore significantly increase and the markets would be less orderly.

In contrast, PRAs have developed deep expertise and robust methodologies to overcome this problem in energy derivatives markets. This enables the agencies to accurately identify prevailing prices in energy derivatives markets with low liquidity and/or lack of depth. These methodologies use transactional and non-transactional data (such as bids, offers, time and other spreads), collected and expertly analysed. PRA methodologies have widespread support, including by market participants and governments (see footnote 1 of appendix). Market participants make extensive use of published PRA prices, including in long-term commercial contracts with 3rd parties, for mark-to-market, VAR and counterparty exposure management purposes.

Argus recently published a White Paper examining this technical issue in more detail.[3]

2. Section 5.1.5, Recommendations on minimum data reporting requirements — Public dissemination of data

Argus is concerned that while section 3.4 of the IOSCO-CPSS consultative report contains measured language effectively noting that the degree of combined aggregation and public dissemination should have regard to an "if appropriate" test, the recommendations of section 5.1.5 appear to lack a similar degree of nuance.

As discussed more fully above, Argus urges IOSCO-CPSS to give more guidance on the "if appropriate" test that the report identifies in section 3.4, and to reflect this guidance directly in section 5.1.5.

Section 5.1.5 currently notes that "due regard must be taken to preserve the confidentiality of reporting firms and counterparties, and public dissemination of data should not allow the identification of counterparties to such data." However as discussed above, Argus believes the "if appropriate" test used in determining the calibration of the combined aggregation and public data dissemination requirements on TRs must go beyond simply preserving the confidentiality of deal counterparty names. In particular, it should require due regard to well-established public policy principles of proportionality and of not causing an unintended market distortion.

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[3] Argus, Are transactional indexes appropriate for European gas and electricity markets?, www.argusmedia.com/News/Regulatory-Responses

By way of further background, I attach an Appendix on Argus and the role of price reporting agencies in energy markets.

In closing, Argus appreciates the opportunity to offer comments on this consultative study. Please do not hesitate to contact me should you require additional information or if we can be of further assistance.

Yours faithfully,

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Appendix Price reporting agencies

Argus is a leading global energy price reporting agency (PRA). The company is an independent provider of market price information, data and market commentary for the international crude oil, petroleum products, natural gas, electricity, emissions and coal markets.

Argus' assessments of open-market OTC energy prices are extensively used by governments worldwide[1] as independent references for taxation and other purposes, by major energy producers and consumers as price references in long-term supply contracts, and by market participants for portfolio mark-to-market, counterparty exposure management and a wide range of investment and market analysis purposes.

Argus operates in an open, competitive and efficient marketplace of price reporting agencies. These agencies are long established, respected and extensively used providers of post-trade price transparency on energy markets. Other price reporting agencies include Platts, Icis (including Icis-Heren), Opis, IHS McCloskey, OMR, Kortes, APPI and Rim. Thomson Reuters and Bloomberg also compete in this space.

Argus was founded in London in 1970 and has 19 offices worldwide. Its reports are available on a non-discriminatory basis to anyone subscribing.

One primary function of PRAs is to help level the playing field between participants in the energy markets by providing subscription access, on standard terms, to post-trade price information. So Argus is committed to, and is an active proponent of, market transparency.

On a daily basis, Argus' well-trained expert market reporters identify prevailing prices in OTC energy markets through the application of detailed and rigorous methodologies. These are publicly available online at www.argusmedia.com/methodology. The company has robust governance and operates a rigorous and transparent controls framework. A global compliance officer oversees the company's compliance regime. This includes a rolling programme of audits to ensure full and continuous adherence to the company's compliance policy, which is publicly available at www.argusmedia.com/compliance.

Further information on Argus can be found at www.argusmedia.com.

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[1] Examples:

- The UK government uses Argus prices in assessing statutory market values for non arm's length sales of North Sea crudes
- The US government's sale of crude from the Strategic Petroleum Reserve in July 2011, as part of the IEA's stock release, used Argus prices as the underlying reference for the sale
- The Belgian federal government uses Argus prices in its formula to set the maximum retail values for petroleum products within Belgium
- The Russian government uses Argus prices in its formulas to set export duty levels for crude and petroleum products
- Saudi Arabian, Kuwaiti and Iraqi state-owned oil companies use the Argus Sour Crude Index (ASCI) price as the benchmark price for all grades of crude oil sold to US customers
- French energy regulator CRE uses Argus prices in its official formula for GDF Suez supply costs
- Russia's state-owned gas exporter Gazprom uses Argus prices for the increasing proportion of its gas sales to Europe which are indexed to spot European gas prices
- The Colombian government uses Argus prices to calculate royalty payments on the country's coal exports
- The Indonesian government uses Argus prices in royalty and tax calculations for coal