

CPSS Secretariat

IOSCO Secretariat

CPSS-IOSCO considerations for Trade Repositories

BME appreciates the analysis and delivery of these considerations for trade repositories as it provides grounds for the development and implementation of its trade repository service. We acknowledge that the considerations include most of the benefits that trade repositories will deliver to the industry as well as the issues that they will have to address.

BME is also grateful for being given the opportunity to contribute to this document after the feedback received from the participants and our experience in developing a trade repository.

Before entering into the details of each of the proposed factors, we would like to make some general considerations.

We very much welcome the approach taken by CPSS-IOSCO of allowing for multiple trade repositories acting in competition, interlinked and with the freedom to offer choice and service for any type of assets and markets. BME disagrees with the scenario of single-asset trade-repositories acting in monopoly conditions, as we believe that the market will be better served if participants and supervisors are provided with choice of access and service.

We also appreciate the focus on price transparency, similar to the one adopted by market infrastructures within the European Code of Conduct. We see trade repositories as a new type of market infrastructure that should be driven by the same principles of transparency and freedom of access.

On the other hand, we would like to point out the complexity of combining the transparency and registration services with the current legal framework, especially in respect to the confidentiality agreements that bind the two counterparties of an OTC derivative contract. Although we expect future European legislation on trade repositories to bring some light into this issue, for the time being and without a clear legal obligation to report, counterparties may not always be allowed to disclose information of their OTC derivatives contracts on a unilateral basis.

It is also important to highlight that one additional benefit of trade repositories, is their ability to concentrate all parties' input in order to deliver the so called "official legal record". For contracts where there is no other reconciliation facility between the two counterparties, the only way to guarantee the accuracy and the quality of the information contained in the trade repository is by allowing the convergence of both parties. Therefore, matching and confirmation services are key to trade repositories, as a unilateral feed by one of the parties could be a source of inaccuracy and weaken the purpose of trade repositories.

Having said this, BME would like to provide some more detailed comments on several of the CPSS-IOSCO Considerations for trade repositories in OTC derivatives markets.

1. Legal framework

BME very much agrees with the explanations provided in this paragraph. We would only like to point out the fact that most of the stakeholders from which we have received some input regarding the trade repository service offering, have proved very much interested in the possibility of having the maximum possible qualified legal effect to the recording of contracts. Ideally, they would prefer trade repositories offering a sort of notary function providing some constitutive effect to matched and registered contracts. Indeed, we believe this would deliver an enormous degree of certainty to participants and would be a valuable motivation to ensure the quality and accuracy of data.

However, this improved legal effect of registration can't be achieved without endorsement from regulators. Currently, the legal effect of registration is enfeebled due to the fact that it has to be reached by voluntary consent to private bilateral agreements from both counterparties, not having the registration of these agreements any priority over other provisions that may also be invoked by the parties in case of dispute.

Additionally, this desirable legal status of the effects of registration is supported and consistent with the reconciliation facility provided by trade repositories, according to which both parties converge in the declaration of the terms and existence of a specific contract, as previously mentioned.

Therefore, BME encourages regulators and supervisors to promote a qualified legal recognition of the registration of an agreement in a trade repository which will surely encourage the use of trade repositories by all the actors in the market. This would allow participants to benefit from enhanced legal certainty and would ensure that supervisors are provided with best quality information.

2. Market transparency and data availability

Although our point has already been introduced before, we would like to insist on the fact that with the current legal framework, the access by authorities to the information contained in trade repositories is not fully guaranteed with the current legal framework.

5. Access and participation

In the opinion of BME, security does not oppose to accessibility. As expressed above, we believe that for a trade repository to ensure quality of information, it is key to offer possibilities of access to all the parties involved so that the official or legal copy of the records can be obtained.

Another point related to this accessibility is facilitating interconnectivity between trade repositories in order to allow inter trade repository matching and the subsequent official record. We believe that this aspect can be also reinforced in some of the considerations where interconnectivity with other providers is mentioned.

7. Timely record keeping

Regarding this consideration, BME would just like to point out the fact that, in order to ensure the information in the trade repositories is timely and accurately maintained, it is not only necessary that trade repositories are able to register information efficiently, but also that the participants are encouraged to inform and maintain the information as soon as possible after the trade has been agreed or updated.

8. Risks in links

In this respect we would like to highlight that interoperability among trade repositories is more straightforward and simple than among other type of market infrastructures due to the fact that it is based only on flows of information. The only main risks that will have to be considered are the ones derived from incorrect disclosure of information, which is in any case an important issue that trade repositories currently need to address.

If the legal framework for the exchange and disclosure of information regarding OTC derivatives contracts is clarified, it would facilitate interoperability among trade repositories which would in turn provide a higher degree of quality to the information of all the industry stakeholders and supervisors.

10. Efficiency

Although we fully agree with trade repositories adhering to price transparency and price unbundling principles, it is important to allow participants, if they so wish, to benefit from all-in fee schedules, always as an additional option to fully unbundled fees.