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Delivered Via Email

CPSS secretariat (cpss@bis.org)
IOSCO secretariat (fmi@iosco.org)

Re: **Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissions, Principles for financial market infrastructures, Consultative report, March 2011**

Dear Sirs,

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. Page 10, Box 1, Public policy benefits of trade repositories

Box 1 notes that "one of the primary public policy benefits of a trade repository (TR)....[is] improved market transparency and the provision of this data [maintained in a TR] to relevant authorities and the public in line with their respective information needs".

Box 1 also notes that, beyond relevant authorities and the public, a TR may serve other stakeholders "includ[ing] exchanges, electronic trading venues, confirmation or matching platforms and third-party service providers that utilise TR data to offer complementary services."

Argus is concerned that while Box 1 identifies these public policy benefits, it fails to equally note the potential in certain circumstances for negative unintended consequences. These may arise from a mis-calibration of measures that allow, other than for regulatory oversight purposes, TRs to commercially or otherwise exploit or distribute the data maintained.

These negative consequences could include distortion in existing competitive provision of services to market participants, less orderly markets and greater overall systemic risk.

Potential to distort existing competitive provision of services to market participants

Trade repositories are envisaged as being established or registered under legislation — particularly the Dodd-Frank Wall Street Reform and Consumer Protection Act and the proposed European Market Infrastructure Regulation. These legislation in effect provide TRs with a privileged position by virtue of a mandatory transaction reporting obligation on market participants.

This privileged position has been explicitly identified by the Committee of European Securities Regulators (CESR), which noted "the potential risk arising from the market power of TRs (that come close to natural monopolies)"[1]. This potentially monopolistic position is also identified in the current IOSCO consultative report — paragraph 3.18.3 noting that "there may be only one TR for a particular market". Indeed, the UK's Financial Services Authority (FSA) has directly called for "a single global trade repository per product".[2]

Argus therefore believes it is important for IOSCO technical guidelines to recognise the potential for, and so seek to avoid creating, unintended market distortions in particular

[1] CESR/10-1351, Transaction Reporting on OTC Derivatives and Extension of the Scope of Transaction Reporting Obligations, www.esma.europa.eu

[2] Speech by Alexander Justham, Director of Markets, FSA, 7 June 2011, www.fsa.gov.uk/pages/Library/Communication/Speeches/2011/0607_aj.shtml

asset classes where service providers already provide certain services 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 asset classes, to freely allow TRs to exploit their privileged access to transactional data in order to commercialise or otherwise publish aggregated price indexes would certainly cause a significant market distortion in the provision of post-trade price transparency on energy markets.

For similar reasons, Argus believes there is a pubic policy obligation to carefully calibrate, on an asset class by asset class basis, any requirements on TRs to publicly release (either for free or on a cost or commercial basis) aggregated transactional price data.

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[3]. CEER noted that:

"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 <u>as well as the interests of information providers</u> 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 <u>in order not to interfere with the commercial activity of providing market intelligence</u>." (Argus emphasis)

For the avoidance of any doubt, Argus fully supports regulators' unfettered access to data held in TRs. In the company's view, this is the primarily purpose of TRs. Argus is also sensitive to the public policy case 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 the public release of information from a TR.

For example, in energy Argus supports a level, frequency and content of public reporting from a TR similar to the US Commodity Futures Trading Commission's weekly Commitments of Traders report[4]. This weekly report provides clear public visibility on volumes and positions in commodity futures markets in the US, aggregated to meaningful categories of market participant.

In Argus' view, this degree of public reporting represents a well-calibrated regime appropriate to energy markets, and which would be appropriate for TRs 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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[3] CEER C11-WMF-11-03a, Final Report on Pilot Project for an Energy Trade Data Reporting Scheme, www.energy-regulators.eu

[4] 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 markets both derivative and cash — there is an important technical argument that allowing TRs to provide price discovery services by publishing price indexes derived from transactional data carries substantial risk of less orderly markets and increased systemic risk.

In less liquid energy markets such as European power and gas — where trading is in forwards contracts which may therefore be captured by mandatory obligations to reporting derivative transactions to a TR — 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 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 markets. This enables the agencies to accurately identify prevailing prices in energy 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 for examples*). 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.[5]

2. Page 18, Box 2, Risk considerations for trade repositories

Box 2 states that "TRs face risks that, if not controlled effectively, could have a material negative impact on the markets they serve. The primary risk to a TR is operational risk, although other risks may hamper its safe and efficient functioning."

As discussed extensively in point (1) above, in additional to operational risks, there are other risks that could result in TRs having a material negative impact on the markets they serve.

3. Page 82, Fair and Open access to TRs

Argus supports the aim of ensuring that TRs do not unfairly use exclusivity clauses that lock out one service provider in favour of another.

4. Page 96, Transparency

This section identifies that "In particular, TRs are designed to help improve the overall transparency of the OTC derivatives markets and potentially other markets."

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

In Argus' view, it would be useful for the IOSCO guidelines to note that ever greater transparency may not always be desirable, since there may be a trade-off between transparency and other desirable features of robust market design such as liquidity. Therefore the benefits of greater transparency should be weighed carefully against possible dis-benefits, particularly in non-equity asset classes where liquidity is often lower than in equities.

This point has been identified by the UK's FSA and the UK government which, in a joint response to a recent European Commission consultation on a review of the Markets in Financial Instruments Directive (MiFID), noted[6]:

"The UK fully supports increased transparency where this will either help with regulatory oversight and / or improve the price formation process. An effective, well-calibrated regime is critical for ensuring fair, efficient and stable financial markets...... However, poorly calibrated transparency regimes can have damaging and unintended consequences. Failure to understand these issues properly and at a granular level can lead to withdrawal of liquidity from markets and stifle the development of products which serve the needs of end-users."

5. Page 98-100, Principle 24: Disclosure of market data

As discussed extensively in point (1) above, Argus believes it is imperative for the "key considerations" identified in the discussion of principles for market data disclosure to note the potential for market distortion and disruption from the re-use, beyond for regulatory oversight purposes, of the data held by TRs.

TRs have a privileged position by virtue of the mandatory reporting to them of transactions. Re-use and/or release of data held by a TR, including in aggregated form, has the potential to cause a market distortion. This will depend on the degree of existing commercial provision of services within each asset class. For example in energy markets, the publication of price indexes by TRs would cause a clear distortion to the long-established marketplace of price reporting agencies.

In addition as described in above, in circumstances such as low liquidity energy markets, the publication by TRs of price indexes could lead to market disruption and increased systemic risk.

Therefore, on an asset class by asset class basis, there is a need to carefully calibrate the rules governing a TR's ability to publish or otherwise commercialise data held, as well as any obligation on it to make public the data collected including in aggregated form.

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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[6] www.hm-treasury.gov.uk/fin_euintl_dossier_mifid.htm

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 physical 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 physical 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 physical 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