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BUNDESVERBAND DEUTSCHER BANKEN

Comments of the Association of German Banks on the CPSS/IOSCO consultative report on OTC derivatives data reporting and aggregation requirements

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Thank you for the opportunity to comment on the CPSS/IOSCO consultative report on OTC derivatives data reporting and aggregation requirements. The German banks have taken an open and positive view of trade repositories (TRs) since discussions about these institutions began. TRs will in future be an even more fundamental part of the market infrastructure and will provide supervisors with all the information they need to fulfil their important responsibilities. This objective, which is shared by the entire financial community, will only be satisfactorily achieved, however, if all TRs are based on harmonised principles and standards, thus enabling a global exchange of information and avoiding a fragmentation that would push up costs and frustrate the necessary consolidation of data.

At European level, reporting requirements are currently being revised as part of the MiFID II project. The resulting rules should be consistent with those proposed by CPSS/IOSCO. In particular, market participants should not be required to submit reports to competent authorities as well as to TRs since the reported information would be largely, or even totally, identical. This should be ensured even in the event of a time lag between the implementation of the two regimes. It would make little sense if, for example, certain data had to be reported to competent authorities for a short time (because, perhaps, TRs were not yet fully established) and this requirement were then replaced (or even supplemented) by a reporting requirement to TRs. Proposals for a reporting regime should, from the outset, focus on TRs, from which competent authorities can access relevant data at any time.

Reporting to TRs

We basically support the objectives mentioned in the report and also the proposed scope of the data to be reported. At the same time, we consider it extremely important to make a distinction between minimum reporting requirements (as set out in section 3.1.2) and possible additional requirements (section 3.1.4). It is essential, before introducing any new reporting requirement, to analyse whether the additional benefit thus obtained will outweigh the anticipated implementation costs for the reporting entities, TRs and the supervisors analysing the data.

This analysis will be comparatively straightforward when it comes to the requirements in section 3.1.2 because these will be easier to implement (by market participants) and the reported data will be easier to evaluate (by supervisors). What is more, fundamental information is involved (high benefit). By contrast, the possible additional requirements and their associated objectives (section 3.1.4) will be much more difficult to realise by both market participants and supervisors. Naturally, it is desirable to close the data gaps which prevent supervisors from fulfilling their tasks. But this need not necessarily mean more reporting: it might also be achieved by an efficient evaluation of existing data. Such an approach would also avoid problems arising from the sheer scale of data reported.

With respect to the possible additional reporting requirements for master agreements, we believe that, at most, it would be useful to specify the agreement under which the transaction was carried out and whether this transaction is eligible for netting.

Efforts should be made to standardise reporting as far as possible, at least across different TRs and also – if feasible – across different classes of derivatives. This will simplify both reporting and the analysis of the reported data.

In our view, the functional approach has considerably greater potential than the data field approach and is therefore more suitable. A functional approach would be much more flexible, especially when dealing with new products, and is therefore more likely to offer a long-term solution. Nevertheless, it might sometimes prove easier to analyse a certain amount of basic information reported in standardised data field form. We consequently believe that a combination of the two approaches is the best way forward.

The same goes for the question of the snapshot versus life cycle approach. Practicable, that is to say flexible, solutions should be sought. As the report rightly points out, each approach is more suitable than the other for handling certain types of data. Transaction-related components of an affirmation, for instance, should be reported immediately. Position, reference or valuation data, on the other hand, should be reported at certain intervals.

Flexibility would also have the advantage of enabling market participants to use various systems for submitting reports. Naturally, it must also be ensured that a flexible approach does not offer opportunities for regulatory arbitrage. It will be necessary to find an appropriate frequency for snapshot reporting since each report submitted generates costs.

Regulators' access to OTC derivatives data

To enable them to carry out their responsibilities, supervisors should have complete and unfettered access to all relevant data. That is in the interests of market participants too, and we strongly support this objective.

It should nevertheless be borne in mind that the information in question is sometimes highly sensitive and, if accessed, could be exploited by third parties (outside the supervisory community) for their own ends. It is therefore vitally important to ensure that the data stay with the relevant competent authorities. Steps must be taken, for example, to avoid a legal situation arising in which third parties could enforce access to reported information.

In addition, the storage systems used by TRs should have robust security mechanisms in place to protect data against unauthorised access at all times.

It would be much easier for supervisors to access (and evaluate) data if there were only one TR per asset class. But it would also be possible to access all global data (on an asset class) spread across several TRs as long as TRs were interoperable. There would, moreover, be far fewer potential problems associated with establishing interoperability between TRs than between CCPs because networking generates no risks for TRs. For these reasons, we believe an interoperability requirement for TRs makes better sense than requiring market participants to report to several (or all) TRs.

If the long-term objective is to enable supervisors to extract information at bilateral portfolio level, then interoperability is essential. Only if interoperability exists will it be easily feasible for two parties to report the same transaction to different TRs.

Access to TR data by counterparties
We agree with the report's conclusions and proposals and have only one comment on this section.

If one of the counterparties notices a discrepancy between the reported data and the transaction confirmation, the reporting entity – and not the TR, as proposed in the report – should first be contacted direct and asked to correct the error. The TR should only become involved if a dispute arises in order to avoid imposing an unnecessary administrative burden on the TR, which in any event is not in a position to verify the reported data's accuracy.

Dissemination of OTC derivatives data to the public
Although the public should have access to an overview of the various product markets, the information disclosed should not allow individual market participants to be identified. Nor should sensitive data be divulged that could be exploited by third parties to the detriment of the market participants concerned. All disclosed data should therefore be aggregated both with respect to the underlying and across time and should on no account enable positions to be matched to specific market participants. This may require more than merely refraining from naming the reporting entities. Many derivatives contracts are so specialised that it would be possible to deduce the identities of the parties even if they were not specifically named.

The major objectives mentioned in the report (e.g. identifying systemic risk, preventing market abuse) will be achieved if data are reported to TRs and accessed and evaluated by supervisors. Though additional dissemination of certain data to the public would doubtless

enhance transparency, it should be envisaged only if misuse by third parties or any other disadvantages for reporting entities can be categorically ruled out. On top of this, more transparency does not necessarily mean better information.

Data aggregation

Section 4.2.1 discusses correlated data aggregation and the challenge of aggregating products with linear risk profiles and products with non-linear risk profiles. To achieve this, every reporting entity would have to calculate and report delta-equivalent notional values (along with other prerequisites mentioned in the report). This additional reporting requirement would be highly onerous for reporting entities. The associated benefit and the precise details of the requirement need to be looked into in greater depth.

The reporting of data by trading desk or individual trader considered in section 4.5.1 would serve no useful purpose, in our view, and would complicate reporting requirements unnecessarily.

Legal entity identifier

We strongly support the establishment of standard, universal legal entity identifiers which fulfil the minimum requirements mentioned in the report (uniqueness, neutrality, reliability, open source and extensibility). These would not only facilitate the realisation of CPSS/IOSCO's objectives, but would also be extremely beneficial to market participants for risk management purposes. Fees for basic LEI-related services should be sufficient to cover the associated costs. At most, it should be possible to offer additional services on a "for-profit" basis.

To enable equitable and impartial supervision, the LEI and the organisations commissioned to establish and run the system should be supervised at both national and international level. Furthermore, LEI governance should be sufficiently open to take account of both market participants and jurisdictions subsequently subscribing to the system.

A product classification system as a tool for data aggregation

We believe that a product classification system for derivatives based on an open standard deserves consideration. Classification will not, however, be feasible in any degree of detail, but only at a certain general level. A code should be developed which "describes" a product class and not just uses a reference number to identify it, as is already the case with securities. The examples cited in the report (ISIN, CUSIP, etc.) would not be suitable tools, in our view. The precise form of a bilateral agreement is specified by the parties to the contract, so it does

not necessarily correspond to a fixed system. It should also be borne in mind that new products are constantly being developed and existing ones constantly modified to better satisfy clients' needs.

The project initiated by ISDA, which has been pursuing similar objectives for some time, offers a promising starting point for establishing a product classification system. Future work should involve CCPs and TRs to a greater extent so that results will be built on as broad a basis as possible. We agree with the report that a step-by-step approach is the most suitable way forward.

Trade identifiers

We largely agree with the views set out in the report. We wonder, however, how the allocation of unique trade identifiers would function in practice. The most sensible approach, in our view, would be for a TR to assign the trade identifier and advise both reporting entities accordingly. To ensure that only one trade identifier was assigned even in the event of both parties to a transaction reporting to different TRs, the TRs involved would have to coordinate with each other. In other words, this is another area where interoperability is needed.

It would also be worth considering assigning the identifier as early as possible in the process, which might have the added advantage of supporting straight-through processing. In this case, the identifier could be generated by the execution venue or confirmation platform (e.g. MarkitWire). This would dispense with the need for the TR to advise the identifier to the reporting entities. For non-standardised transactions, one of the counterparties (e.g. always the seller) could determine a trade identifier for both parties.