



EUROPEAN CENTRAL BANK

EUROSYSTEM

CONSULTATION OF THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS ON TRADE REPOSITORIES IN THE EUROPEAN UNION

ECB CONTRIBUTION

1 INTRODUCTION

Trade repositories, by acting as authoritative registries of key information regarding open over-the-counter (OTC) derivatives trades, provide an effective tool for mitigating the inherent opacity of OTC derivatives markets. Enhanced market transparency helps public authorities and market participants to monitor the build-up and distribution of exposures in the relevant markets, thereby supporting sound risk management, market discipline, and effective oversight, regulation and supervision. At the same time, an increased reliance of users, public authorities, interoperable infrastructures, service providers and other market participants on trade repositories means that adequate measures to ensure the availability, timeliness and accuracy of the data stored in trade repositories are essential. Against this background, the ECB welcomes the consultation of the Committee of European Securities Regulators (CESR) on trade repositories in the European Union as a timely and appropriate opportunity to reflect on the role of trade repositories for OTC derivatives markets and the respective policy priorities from an EU perspective. In line with the G20 leaders' statement of September 2009, the ECB strongly supports the reporting of all OTC derivatives contracts to trade repositories.

2 GENERAL CONSIDERATIONS

The use of trade repositories for OTC derivatives is a relatively recent development, which so far pertains only to credit default swaps. As the

industry matures and extends to other types of OTC derivative, it may evolve. The ECB considers, in line with its overall approach to the evolution of market infrastructures, that this process should be predominantly market-led. Against this background, the ECB would suggest focusing on generic, high-level regulatory and oversight expectations regarding the role and functioning of trade repositories at this stage.

Furthermore, the ECB would like to underline that the functions that are currently performed by existing trade repositories could also be performed by other public or private entities. Therefore, the ECB would suggest following a functional approach for issues relating to trade repositories, focusing on the sound provision of the service rather than on the nature of the provider. All references made to trade repositories in the ECB's contribution to the consultation should be read as a reference to the trade repository function, rather than to a specific type of provider of this service.

3 RESPONSES TO INDIVIDUAL QUESTIONS

3.1 FUNCTIONS AND CHARACTERISTICS OF A TRADE REPOSITORY

Do you agree with the functional definition of what constitutes a trade repository?

The ECB agrees with the suggested functional definition of a trade repository as a central registry of authoritative copies of open OTC derivatives trades.

What other characteristics of a trade repository do you consider essential?

Another essential feature of a trade repository is its role in making the stored transaction data available for downstream processing. The ECB considers that any trade repository which fits the above definition should play this role effectively, regardless of whether or not the records maintained by the trade repository are also the official legal records of the transactions. However, trade repositories should be permitted to choose different business models regarding the possible ancillary services (e.g. netting, asset servicing, or effects settlement) that they may wish to engage in, and such services should therefore not be regarded as generic to trade repositories.

3.2 AVAILABILITY OF DATA BY TRADE REPOSITORIES

In your opinion, what kind of information should be available to: regulators, market participants and the general public, respectively? Please differentiate by asset class where appropriate.

A trade repository should, in principle, make two types of information available: on the one hand, information regarding the functioning of the trade repository and, on the other hand, information relating to the market data maintained by the trade repository. Whereas the former should enable market participants to assess the costs and benefits of using the trade repository's services and should inform regulators about the compliance of the trade repository with applicable oversight or regulatory expectations, the latter should augment market transparency for the benefit of the general public, users and regulators alike.

In terms of specifying the respective reporting requirements, the ECB notes the importance of effective global cooperation and convergence. The only currently existing trade repository for OTC derivatives, the US DTCC Warehouse Trust for credit default swaps, is fully global in nature (e.g. in terms of the location of the

counterparties to the contracts, the currency denomination of the contracts and the location of the reference entities to the contracts), and plans for developing additional data warehouses (e.g. for interest rate swaps) have a similarly global scope. A key feature of an adequate reporting framework for trade repositories is therefore its alignment with the different information needs of public and private sector stakeholders across various jurisdictions. In this context, the ECB would like to underline that two major strands of work are currently under way to define global reporting requirements for trade repositories.

First, in July 2009 the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) set up a working group to review the application of the 2004 CPSS-IOSCO recommendations for central counterparties to clearing arrangements for OTC derivatives. The working group also considers aspects relating to trade repositories. Specific requirements could be elaborated in that framework. Second, the OTC Derivatives Regulators Forum, established in September 2009, has been working, in close coordination with the CPSS-IOSCO working group, to define specific reporting requirements for trade repositories with respect to the public and different sets of regulators and central banks, in line with the information needs and competences of the respective constituencies. Both strands of work are pursued in close cooperation with market participants.

Do you agree that trade repositories should provide adequate processes to ensure the reliability of the data provided? How could reliability be ensured?

A wider use of trade repositories for OTC derivatives will entail an increased reliance of various stakeholders on the timeliness and accuracy of the data stored in such repositories. Against this background, the ECB considers adequate arrangements to safeguard the

reliability of data an indispensable feature of any trade repository. Such arrangements would need to ensure in particular the integrity, timeliness and confidentiality of data, and they would need to tie in closely with more general measures to ensure the operational reliability and resilience of the trade repository.

Do you see any other entity with legitimate information needs with regards to OTC derivatives trades recorded in a trade repository? If yes, please explain.

The ECB concurs with CESR's assessment that entities with legitimate information needs include regulators, interoperable infrastructures, service providers, market participants and the general public, but would like to add the following specifications.

First, the term "regulator" should be understood in a broad sense, involving (i) all authorities with competence for the trade repository (namely statutory regulators and overseers, and central banks of issue of major currencies of denomination of contracts stored in the trade repository); (ii) authorities responsible for the supervision and oversight of major users of the trade repository, interoperable infrastructures and service providers; and (iii) other authorities with a statutory interest in the smooth functioning of the trade repository (e.g. with mandates for market integrity and financial stability, especially in jurisdictions/regions with a material segment of the concerned OTC derivatives market). Second, the term "market participants" should include all financial institutions with a significant amount of trades stored in the trade repository.

3.3 LOCATION OF A TRADE REPOSITORY

Do you see a need for establishing trade repository facilities in Europe if a global repository already exists elsewhere? Do you believe that a European repository is needed for each OTC asset class as described above (i.e. CDS, interest rate and equity derivative markets)? Please give reasons.

If yes, what form should the trade repository facilities to be established in Europe take (e.g. single point of information, back-up facility) and which trades should be registered in such facilities (e.g. trades of European market participants, trades referring to European underlying entities)? Please specify.

Even though trade repositories are not payment systems or settlement systems, they have potential systemic relevance owing to the strong reliance of many systemically important market infrastructures on the data stored in these trade repositories. Disruptions in the operation of trade repositories and/or deficiencies in the availability and reliability of their data could affect the smooth functioning of euro area central counterparties that will use the trade repositories' services. Against this background, the ECB would like to stress the importance of (i) effective Eurosystem access to all relevant information regarding global trade repositories storing euro-denominated derivatives contracts so as to satisfy Eurosystem concerns regarding the safe and resilient functioning of these entities; and (ii) adequate oversight frameworks for global trade repositories, as well as the participation of the Eurosystem and CESR within these frameworks. Establishing adequate cooperative oversight arrangements for global trade repositories is an indispensable condition for accepting offshore global systems.

3.4 LEGAL FRAMEWORK FOR TRADE REPOSITORIES

Do you think there should be harmonised EU requirements for the regulation and supervision of trade repositories? To what extent do you expect that protocols, common market practices and the like, surrounding proposed solutions for trade repositories, could promote harmonisation and foster safety and efficiency in the post-trading process? Please provide reasons for your position.

Given the potential systemic importance of trade repositories, there is a need for effective regulation and oversight of these entities.

Furthermore, given the typically global scope and financial stability implications of these entities, convergence of the respective requirements and practices of authorities is essential, at both the EU and the international level. Such considerations could usefully be reinforced by EU legislative action. However, given that the development of trade repository industry is still in its early stages, such legislation should be principle-based, rather than very detailed and prescriptive. At the same time, market-based initiatives, at both the EU and the international level, could play a useful complementary role in fostering progress of different trade repositories towards best risk management and commercial practices and could also help to promote possible progress towards interoperability.

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