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### **CPSS-IOSCO Considerations for Trade Repositories in OTC Derivatives Markets**

CFA Institute is pleased to comment on the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) consultative report on Considerations for Trade Repositories in OTC Derivatives Markets (the “Consultation”).

CFA Institute, through its members’ experience in international markets and different investment disciplines, represents the interests of investors and investment professionals to standard setters, regulatory authorities, and legislative bodies worldwide. CFA Institute promotes fair, open, and transparent global capital markets, and advocates for investors’ protection.

We welcome the opportunity to comment on the considerations for Trade Repositories (TRs). TRs are central databases that record the details of open OTC derivatives transactions. TRs thus serve a critical function in enhancing trade transparency in over-the-counter (OTC) derivatives markets and form a key component of post-trade infrastructure.

The transparency benefits of TRs help underpin investor confidence in OTC derivatives markets and facilitate monitoring of risk exposures. CFA Institute therefore supports the CPSS-IOSCO initiatives in respect of Trade Repositories.

#### **General Comments**

By their nature, OTC derivatives markets are not subject to formal transparency requirements and thus these financial instruments are relatively opaque in comparison to those instruments primarily traded on regulated exchanges. Enhancing the transparency of OTC derivatives markets is a key step towards strengthening the functioning and resiliency of these markets.

Investor support for more transparency in OTC derivatives markets is highlighted by the results of a survey of CFA Institute members in October 2009<sup>1</sup>. In that survey, 66% of respondents said that electronic reporting of trades that continue to trade over-the-counter would provide an appropriate level of transparency for investors. We believe that TRs serve as an effective conduit for that electronic reporting.

We note, however, that TRs are only one of the components necessary to strengthen the market infrastructure. CFA Institute members also support requiring all standardized and standardizable derivatives contracts to be traded on-exchange and cleared centrally<sup>2</sup>. In combination, we believe these two elements would enhance transparency and therefore permit investors to have a more thorough understanding of market trends and pricing. Under this type of system, TRs and central clearing counterparties would act as complementary post-trading infrastructure initiatives that would improve transparency and minimise risk, respectively. On-exchange trading for standardized and standardizable contracts, on the other hand, addresses the separate trading issues of liquidity and price discovery. This ultimately means that these three elements are complementary, and are not substitutes for each other.

Various public and private sector initiatives have already led to the establishment of TRs. The most prominent example is the establishment of the Depository Trust and Clearing Corporation's (DTCC) Trade Information Warehouse, which provides weekly data on credit default swap transactions.

However, the Consultation notes that currently there are no international standards that are directly addressed to a TR. The Consultation therefore seeks to establish policy guidance in this area.

CFA Institute's positions are that price transparency is one of the most important goals of financial markets, and that investors should have full access to relevant market information. Trade Repositories can help achieve these goals.

CFA Institute has consistently called for a central data repository to enhance market transparency in general. A uniform market data collection facility that stores all relevant trading data would provide a standardized format for data collection and distribution and would eliminate the need for legal structures directing cooperation among regulators. Such a repository would therefore make collection, submission, and review of relevant market data easier for regulators and investors from disparate markets.

Our main observations with regard to the specific considerations in the Consultation are summarised as follows:

- We support the CPSS-IOSCO initiative to establish policy guidance for TRs and believe that the Consultation thoroughly addresses the appropriate considerations.

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<sup>1</sup> The survey results are based on the responses of 755 CFA Institute members based in the United States. The results are available at [http://www.cfainstitute.org/Survey/us\\_iwg\\_poll\\_report.pdf](http://www.cfainstitute.org/Survey/us_iwg_poll_report.pdf)

<sup>2</sup> The same October 2009 survey found that 68% of respondents supported on-exchange trading for standardized and standardizable contracts, and 78% supported central clearing for such contracts.

- There is scope to rationalise the existing 12 considerations. There are instances where certain recommendations are repeated in more than one consideration, and therefore it would be appropriate to consolidate overlapping considerations. This would produce a more coherent set of considerations for both regulatory authorities and market participants, and would facilitate implementation of the policy guidance.

Please do not hesitate to contact us should you wish to discuss any of the points raised.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'C Cronin'.

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### **Specific Comments**

The Consultation sets forth 12 considerations for TRs and relevant authorities. A detailed description of each consideration is provided in section 3 of the Consultation. We comment on each consideration (in italics) in turn.

#### **1. Legal framework**

*A TR should have a well founded, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.*

We support public disclosure of the legal framework governing TRs, including their rules and operating procedures. We also support the recommendation that the legal framework should describe the system for dispute resolution.

#### **2. Market transparency and data availability**

*A TR should support market transparency by making data available to relevant authorities and the public in line with their respective information needs.*

As we have noted above, central data repositories support market transparency by enabling trade data to be collected and stored in a consistent, standardized format. TRs therefore help improve the integrity, quality, and availability of market data. Such a centralised public record-keeping function also facilitates supervisory cooperation and enables regulators to better monitor risk exposures.

The explanation of this consideration on p.7 of the Consultation notes that “at a minimum, all TRs should make publicly available aggregate data on open positions and trading volumes on a periodic basis with geographical and currency breakdowns, as available.” For this information to have real utility to investors, this information should be made available as frequently as possible on a non-discriminatory basis, and not less than weekly.

On p.8, the Consultation notes that “the type and granularity of trade information that is recorded and reported to relevant authorities by a TR should conform to established regulatory expectations and industry practices.” Regulatory authorities should clearly

communicate the granularity of trade information required for regulatory purposes. This would enable all interested parties to form clear expectations over what data should be reported and what information is relevant.

The Consultation also notes that “a TR should be expected to report trade information in a common and easily accessible format that facilitates relevant authorities’ ability to aggregate and compare information across TRs and market infrastructures with similar central record keeping functions”. We note that data standardization is even more important if there is more than one TR per asset class. In this case, without consistent standards over data format, it would be difficult for regulators and investors to consolidate information across TRs. This would reduce the transparency of market data and diminish the utility of TRs.

### **3. Operational reliability**

*A TR should identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures. Systems should be reliable and secure, and have adequate, scalable capacity. Business continuity plans and backup facilities should be established to allow for timely recovery of operations.*

We support the operational risk management recommendations set out in the Consultation.

### **4. Governance**

*Governance arrangements for a TR should be clear and transparent to fulfil public interest requirements and to support the objectives of owners and participants. In particular, they should recognise the TR’s unique role and responsibilities in the markets it supports.*

We support the governance recommendations for TRs as described in detail on p.9 of the Consultation.

In particular, we support governance arrangements that establish appropriate measures to identify and manage conflicts of interest<sup>3</sup>; that ensure that applicable standards for recording and reporting trade information are followed; and that ensure effective distribution of reliable trade data.

We also welcome the recommendations that both buy-side and sell-side users be fairly represented in a TR’s governance arrangements, and that a TR’s senior management possess requisite skills and knowledge. These considerations ensure, respectively, that the broadest interests of investors are served, and that the board is sufficiently competent.

### **5. Access and participation**

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<sup>3</sup> The Consultation notes that such conflicts of interest may arise between the unique public role of the TR and its own commercial interests particularly if the TR offers services other than record-keeping or between commercial interests relating to different participants and linked market infrastructures and service providers.

*A TR should have objective and publicly disclosed access and participation criteria that permit fair and open access and participation by market participants, market infrastructures and other service providers that seek to join or link with the TR. A TR should require participants and linked entities to have robust operational capacity and internal controls. Requirements that limit access and participation on grounds other than risks should be avoided.*

We support the considerations that promote open access to the TR for all relevant stakeholders.

In particular, we welcome the recommendation on p.10 that states that “a TR should employ non-discriminatory practices and make its services available on fair and reasonable terms that are applied consistently across users of the TR’s services... *[Market infrastructures and service providers]* should not be subject to anti-competitive practices such as product tying, contracts with non-compete and/or exclusivity clauses, overly restrictive terms of use and anti-competitive price discrimination”. These recommendations are necessary to put TR owners and regulators on notice that their purpose and role is to provide market data to regulators and market participants, and that that purpose and role is best served when they provide fair access to the TR’s data and mitigate the potential for discrimination amongst stakeholders.

Another important consideration is the need for TRs to link effectively with other elements of the post-trade infrastructure chain. In this regard, p.10 notes that “a TR should aim to support interconnectivity with other providers of clearing and settlement services for the products supported by the TR, where requested, so that competition and innovation in post-trade processing are not impaired as a result of the centralisation of trade information in such a TR”.

The issue of interconnectivity is particularly important where a central counterparty (CCP) utilises the data stored in the TR as the official record for setting margin requirements as well as for clearing and settlement.

## **6. Safeguarding of data**

*A TR should implement appropriate policies and procedures, and devote sufficient resources, to ensure the confidentiality and integrity of information. Further, a TR should have robust system controls and safeguards to protect the data from loss and information leakage.*

In addition to implementing measures to safeguard data from loss or damage, a TR should implement quality controls to ensure the accuracy, validity, and reliability of data, so that market participants are not supplied with faulty or misleading information.

This consideration partly overlaps with consideration 3 (operational reliability) in that it addresses operational risk management issues. We suggest rationalising these considerations accordingly.

## **7. Timely record keeping**

*A TR should promptly record the trade information it receives from its participants. To ensure the accuracy and currency of data, a TR should employ timely and efficient record keeping procedures to document changes to recorded trade information resulting from subsequent post-trade events.*

We have no comments to add in respect of timely record-keeping.

## **8. Risks in links**

*A TR that establishes domestic or cross-border links with other TRs, market infrastructures or service providers should evaluate the potential sources of risks that can arise, and ensure that the risks in the design and operation of such links are managed prudently on an ongoing basis. There should be a framework for cooperation and coordination between the relevant authorities of the linked entities.*

This consideration also overlaps with consideration 3 (operational risk management) and should be consolidated accordingly.

Information sharing between the relevant authorities of linked entities is somewhat separate and is a key consideration. In our view, it would be better to explicitly include this point in consideration 12 (regulation and oversight) rather than in consideration 8.

## **9. Communication procedures and standards**

*A TR should use or accommodate the relevant international communication procedures and standards in order to facilitate efficient, accurate and reliable exchange and recording of trade information.*

We have no comments in respect of communication procedures and standards.

## **10. Efficiency**

*While maintaining safe and secure operations, a TR should be cost-effective in meeting the requirements of users as well as in establishing interoperability with other TRs or interconnectivity with other market infrastructures and service providers.*

We support the recommendations related to cost-effective service offerings and efficient interoperability and interconnectivity with other relevant entities.

In particular, we welcome the recommendation on p.12 that states “... The fees of a TR should be fair and reasonable. The rules of a TR should disclose a schedule of prices, rates or other fees for services rendered to promote competition, prevent discrimination, and encourage innovation and use of TRs. A TR should not bundle prices of TR services with those of any other of its services that complement its record keeping function”.

Disclosure of fees enables investors to determine whether the service provided by the TR delivers appropriate value. Unbundled fees are important as they provide greater product transparency. This places downward pressure on costs as providers compete on more transparent terms.

We note that the point relating to unbundled fees overlaps with the recommendations contained in consideration 5 (access and participation) that address product tying and price discrimination.

### **11. Service transparency**

*A TR should provide market participants with sufficient information on its services to allow them to identify and evaluate accurately the risks and costs associated with using the services.*

The recommendations contained in this consideration are largely repeated elsewhere. For example, under consideration 11, the Consultation notes that “all TR fee schedules should be made public, including those for any complementary services, any discounts and/or rebates”.

Public disclosure of fee schedules and service offerings is addressed in consideration 10. We therefore recommend consolidating considerations 10 and 11.

### **12. Regulation and oversight**

*A TR should be subject to transparent and effective regulation and oversight. In both a domestic and an international context, relevant authorities should cooperate with each other.*

CFA Institute supports regulatory cooperation and exchange of information. We also note that the regulatory approach towards TRs should be consistent across jurisdictions in order to provide for fair treatment and investor certainty.

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