Committee of European Securities Regulators Transaction Reporting on OTC Derivatives and Extension of the Scope of Transaction Reporting Obligations

A response by:

Association for Financial Markets in Europe
International Swaps and Derivatives Association
Associazione Italiana Intermediari Mobiliari

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The Association for Financial Markets in Europe (AFME), the International Swaps and Derivatives Association (ISDA) and the Associazione Italiana Intermediari Mobiliari (ASSOSIM) welcome the opportunity to respond jointly to the Consultation Paper published by the Committee of European Securities Regulators (CESR) on 19 July 2010 addressing transaction reporting on OTC derivatives and extension of the scope of transaction reporting obligations.

We are grateful for your consideration of our responses to the queries posed in the consultation paper. We would be pleased to discuss our response and related issues with if that would be helpful to you.

Kind regards,

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Q1: Do you agree with the solution proposed by CESR for the organization of transaction and position reporting on OTC derivatives?

Whilst supporting the streamlining of reporting mechanisms, we hereby state a preference in favour of option 2 (“Define a new position reporting regime through trade repositories and allow MiFID transaction reporting through trade repositories”), thereby agreeing with CESR’s own reasoning and preference in the matter. We believe that the existing transaction reporting process is well-established and effective and are pleased to see that it is intended that it remains in place intact. The frequency of the current reporting cycles of the trade repositories currently precludes their effectiveness in the transaction reporting context.

However, as the frequency of trade repository reporting cycles increases over time, we believe that in the interests of avoiding potential duplication and managing IT spend, the repositories should take an increasingly central position at the heart of reporting processes generally for non-cleared trades. Naturally, CCPs can and will be sources of transaction reporting for cleared trades.

Q2: Do you have any other views on the possible ways to organize transaction and position reporting on OTC derivatives?

We would seek further clarity on the delineation of which non-cleared product types should be transaction-reported. Furthermore, there was a stated need for more detail to be specified regarding timings, and the level of trade detail needed to satisfy the transaction reporting obligation.

 Paragraph 13d of the CESR consultation paper suggests that any regime for position and transaction reporting should avoid duplication of reporting obligations for firms or investors. In accordance with this principle, we strongly endorse global trade repositories, since the use of one global trade repository per asset class is the most effective mechanism for providing regulators with a consolidated view of transaction and position reporting without the risk of duplication inherent in multiple regional / country-based repositories. Additionally, it is important that technical and operational standards (such as FpML, FPL and ISO) are consistently used across the market, such that reporting is undertaken in one “language”, thereby facilitating the aggregation and analysis of the data. Client confidentiality issues need to be recognised and addressed when reviewing options for reporting infrastructure and implementation.

One Association member indicated that the TREM arrangements could be implemented and utilised in a more consistent fashion across EU member state regulators. A major commodities market participant suggested the use of MTFs or brokers as a potential alternative reporting conduit for transactions between small, low volume firms as well as the use of downloads from confirmations systems in respect of trades between such firms not intermediated by an MTF or broker.

Overall, and specifically in respect of repositories, we are supportive of full regulatory access to data as necessary for the relevant regulators to fulfill their responsibilities, but we note that various confidentiality issues will need to be addressed through a legally-backed and consistent framework of regulatory disclosure requirements.

Q3: Do you agree with the extension of the scope of transaction reporting obligations to the identified instruments?

Clarity of product coverage was cited as a prime requirement if any extension of the scope of the reporting obligation were to be proposed for non-cleared OTC transactions. It is felt that providing the requisite detail via ESMA technical standards should meet this need. At a high level, firms suggested that there was a need on an ongoing basis to make sure that structurally the trade repositories function in a
fashion that is as consistent as possible with the general requirements of the current (and any future) reporting environment. There is agreement with the exclusion of basket and index-based OTC derivatives from the ambit of the reporting requirement. In respect of paragraph 42, the need for a single consolidated reporting regime is seen as paramount, as is the need to ensure that the promulgation of any bespoke or national arrangements is only undertaken in circumstances where a significant and measurable element of risk or lack of transparency exists. As a general matter, we feel that any extension to the scope of the reporting requirement to a wider range of instruments should not lead to fragmentation or undue complexity, in order that systems remain consolidated and easy to use.
The Associations

AFME (Association for Financial Markets in Europe) promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association through the GFMA (Global Financial Markets Association). AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76. For more information please visit the AFME website, www.afme.eu.

The International Swaps and Derivatives Association, or ISDA, was chartered in 1985 and has over 820 member institutions from 56 countries on six continents. Our members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Since its inception, ISDA has pioneered efforts to identify sources of risk in the derivatives and risk management business and reduce those risks through: documentation that is the recognized standard throughout the global market; legal opinions that facilitate enforceability of agreements; the development of sound risk management practices; and advancing the understanding and treatment of derivatives and risk management from public policy and regulatory capital perspectives.

ASSOSIM (Associazione Italiana Intermediari Mobiliari) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the Investment Services Industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the total trading volume.