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EFET Response to ESMA Public Consultation on

"Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories

(Ref:ESMA/2012/379)"

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3 August 2012

RE: Contribution to the consultation paper on Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories

The European Federation of Energy Traders (EFET)[1] welcomes the opportunity to respond to the consultation by the European Securities and Markets Authority (ESMA) on its Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories (hereafter DTS). We have limited the scope of our response to this consultation to the sections of the DTS that are most relevant to the interests of EFET members.

EFET key concerns are summarised below and further detailed in the Annex.

- We appreciate that ESMA has partly addressed our concerns with regard to the definition of hedging (by also including proxy hedging) and the clearing threshold (by raising the level of the clearing threshold). **We do however strongly oppose the idea that crossing a threshold in one asset class would trigger clearing (and thus margining requirements) in other asset classes and for other entities as well**. This would have a severe impact on (especially) the commercial hedging treasury- and foreign exchange activities of market parties by creating a clearing 'cliff-edge' resulting in a significant liquidity squeeze on non-financial firms. This will need to be funded which is increasingly difficult at a reasonable cost in the current market environment and will divert resources from other productive (investment) activities. We therefore strongly advise ESMA to ensure that crossing the threshold in one asset class would only trigger clearing of the transactions relating to that specific asset class.

- Although ESMAs has chosen a threshold that is based on a gross figure, **EFET has a strong preference of basing the clearing threshold on a netted figure**. Such an approach is more representative of the risk carried by firms (all jurisdictions allow termination and valuation of financial contracts and agreement upon insolvency of one party). It also better reflects the wording in Article 10 (4) (b) of EMIR, where it explicitly states that the clearing threshold "shall be determined taking into account the systemic relevance of the sum of net positions and exposures […]". According to ESMA, the main reason for favouring a "gross" above a "netted" threshold is that the former would –

[1] The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information, please refer to: www.efet.org.

especially for smaller companies- be easier to calculate and implement. Calculating netted exposures is undertaken as a matter of the normal business of all firms and, therefore, cannot be used to justify a gross approach. .

- If ESMA decides to set the clearing threshold on a gross notional value, it is crucial that it is set at a level that reflects the high notional (or ticket) value of commodity derivative contracts compared to other asset classes – the currently higher level of the commodity threshold does not adequately take account of this factor. In addition, the threshold is not being set at a level that is commensurate with a level of systemic risk. ESMA has yet to justify what is the level at which firms will have a systemic impact. . Setting the threshold so low will mean that they effectively become a hedging exemption – which was not the intention of EMIR and should not be introduced by the back door. There is now a real risk that non-systemic firms will be captured and face significant additional cost and liquidity constraints. This will result in less market liquidity on traded markets, less competition, a squeeze on investment in much needed physical assets and a greater concentration of trading in financial firms, factors which will perversely increase the level of (systemic) risk in commodity markets. **EFET is, therefore, of the opinion that ESMA should initially set the clearing threshold at a materially higher level than currently proposed – it can then be further calibrated with data that will be gathered under the EMIR reporting requirements**.

- **We support ESMA's intention to review the clearing thresholds on a regular basis although there should be no presumption that the reviews will only lead to downward adjustments in the threshold** (paragraph 66 of III.V.). Such reviews should take into account commodities price inflation (for the commodities derivatives threshold), and the overall growth of the global OTC derivatives market (to continue reflecting appropriate systemic levels). Also, any change in the definition of financial instrument that might occur under the Markets in Financial Instruments Directive (MiFID) II should automatically trigger a revision of the thresholds and this should include also an open consultation with market participants.

- In order for market parties to be able to adequately assess the impact of EMIR **it is crucial to know which derivative contracts** count towards the clearing threshold. Although we understand that the final scope of EMIR is dependent on the revision of MiFID and specifically on the definition of financial instrument pursuant to MiFID, we encourage ESMA to already now give more clarity on the scope of EMIR and the proposed Regulatory Standards, to avoid any misunderstanding on the matter. In this respect the following transactions should be excluded from the calculation of a firms' position against the clearing threshold:

    - Any transaction objectively measurable as reducing commercial risk.
    - Any transaction that it is not defined as a commodity derivative transaction under MiFID. This also implies that physical forwards traded on OTC markets are excluded.
    - Any intra-group transaction once the general exemption for such transactions has been granted.
    - Any transaction that has already been subject to central clearing (also voluntary) – as such a transaction does not give rise to any additional

credit risk and therefore is irrelevant for the purpose of assessment against the clearing threshold.

ESMA could clarify these issues directly in the technical standards.

- Based on EMIR level 1 the use of bank guarantees is already restricted to non-financials. Unfortunately, the current ESMA proposals further restrict the use of bank guarantees as collateral. In particular, the requirement that bank guarantees should be fully backed by collateral that can be realised on a same day basis severely restricts the ability of non-financial firms to use bank guarantees, thereby undermining a key aspect of the level 1 text. Given the fact that non-financials are *not* systemically important to the economy and don't have the same access to financial resources as banks, **we firmly believe that there should be no undue restrictions on the use of bank guarantees as collateral by non-financial firms**. We, therefore, urge ESMA to remove this unnecessary and overly restrictive requirement. If ESMA does not make this change, it will increase the burden of clearing and posting of cash collateral and would have a significant impact on the liquidity position of non-financial firms. It should be in the interest of ESMA to facilitate more central clearing even if this is not mandatory. The proposed requirements with regard to bank guarantees could encourage firms towards non-standard products that cannot be centrally cleared.

- With regard to risk mitigation requirements for non-cleared contracts, we note that ESMA is proposing a set of measures that could help to reduce (counterparty) risk for non-cleared trades**. ESMA needs to ensure that such measures do not duplicate existing and fully effective industry arrangements** (such as existing EFET and ISDA agreements) leading to unnecessary costs for firms. If ESMA concludes that improvements need to be made to the existing industry standards, it should liaise directly with ISDA and EFET. In order to reduce the (administrative and cost) burden for companies, market parties who trade under approved ISDA and/or EFET agreements should automatically be deemed compliant with regard to the risk mitigation requirements under EMIR. These agreements would also be useful to demonstrate "adequately sound and robust risk management procedures" which are necessary in order to receive an exemption for intra-group transactions.

- **Intra-group transactions do not have an effect on the market and they should be more clearly excluded** from both counting towards i) the clearing threshold, ii) any requirement for clearing in the event a non-financial firm breaches the threshold, iii) any reporting requirements and iv) any additional risk mitigation requirements. Although part of the draft regulatory standards for intra-group transactions still have to be drafted by EBA, EIOPA and ESMA, these transactions should not be brought within scope of any EMIR requirements once exempted, as doing so would provide no reduction in (systemic) risk but would lead to significant additional and unnecessary costs for non-financial firms.

- EFET welcomes the fact that ESMA has provided a detailed proposal on the overview of the fields to be reported within the transaction reporting regime. This detailed proposal needs further refinement both in terms of the content and format to take account of the specificities of the energy and commodity markets – our detailed comments are included further below. A fully detailed comparison to the transaction reporting details applied under other regulations (REMIT, MiFID, etc) is necessary to reduce the operational burden on reporting parties and make the requirements consistent and implementation efficient. **We therefore urge ESMA to further align with ACER and ensure i) a sufficiently detailed set of specifications and ii) the readiness of the trade repositories for commodity and energy transaction reporting requirements well before the reporting obligations take effect.**

- It is of crucial importance that ESMA allows sufficient time for implementation of EMIR obligations. The requirements introduced by EMIR will have a substantial impact on the business practices of non-financial firms In order to adjust processes and implement IT infrastructure modifications in time, companies require flexibility in the implementation period. **We therefore urge ESMA to increase the level of involvement of stakeholders in the definition of the implementation phase and set out further details on the envisaged timelines.**

If you have any questions regarding this response, please do not hesitate to contact: Karl-Peter Horstmann (Chair of EFET Task Force Market Supervision), Cemil Altin (Vice-Chair of EFET Task Force Market Supervision) and Reinier Waters (Chair of EFET Working Group on EMIR).[2]

Yours sincerely,

On behalf of the European Federation of Energy Traders (EFET)

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EFET European Federation of Energy Traders

Annex I: Detailed comments

A. Clearing eligible contracts (page 7 and 69 onwards)

A number of points remain unclear from the DTS with regard to the exact scope of derivative contracts potentially eligible for a clearing o**bligation under EMIR:**

Physically settled OTC derivatives:

In its draft regulatory technical standards, ESMA should clearly define which kind of contracts fall under the scope of EMIR. In particular, although EFET welcomes ESMA representatives' reassurance that physical forwards are currently excluded from the scope of the clearing eligible contracts, we would appreciate if this is communicated more clearly with the market, so that market parties can exactly determine the scope and impact of EMIR. ESMA could consider to draft a policy brief, wherein it would be clarified in bigger detail which contracts are in/ out of scope of EMIR.

Discounting certain transactions in the calculation of the clearing threshold

The ESMA DTS should clearly stipulate which kind of transactions are not to be taken into account in the calculation of a firms' position. To be consistent with rec. 31 of EMIR, risk mitigation techniques already applied by the non-financial counterparties should be considered in the calculation of the clearing threshold ("[…] recognise the methods of risk mitigation used by non-financial counterparties"). In our opinion these are the following transactions:

- All transactions falling within the scope of the definition of OTC derivatives contracts objectively reducing risks pursuant to Art. 1 NFC of the DTS on non-financial counterparties.
- All transactions traded over regulated venues (Regulated Markets).
- All transactions, concluded over regulated venues or on OTC markets which are voluntarily cleared. Obviously, those transactions are already centrally cleared, their underlying credit risk is sufficiently mitigated, and they are, therefore, irrelevant for the clearing threshold.
- Collateralised derivatives positions; this would be consistent with the rules of the CFTC which considers that collateralised derivatives are under certain circumstances completely exempted from the calculation of the threshold.
- Any intra-group derivative transaction once the general exemption has been granted.

Recognition of third country equivalent markets

Under Art 2 (7) EMIR (level 1), OTC derivatives are defined as derivatives transactions that are not traded on a regulated market or a "third country equivalent market in accordance with Article 19 (6) MiFID". Under Article 19 (6) MiFID, the European Commission and ESMA were supposed to publish a list of markets deemed equivalent, but it appears that the list has not been published yet.

ESMA should confirm that the list will be published before EMIR Article 10 (on non-financial counterparties) and Article 11 (on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP) are implemented. Otherwise, commodity trading companies will have to treat derivatives that are traded on third country exchanges such as NYMEX and DME as OTC derivatives, i.e. their notional values have to count towards the threshold, which we believe is not the objective of the EMIR level 1 text. In the interests of a coherent implementation, it is imperative that ESMA should have such a list ready, even on an interim basis, before the relevant EMIR provisions enter into force. In addition, ESMA should foresee regular reviews of this list in order to keep it updated.

B. Clearing threshold (from page 15 and 72 onwards)

While EFET appreciates that ESMA has partly addressed our concerns with regard to the clearing thresholds by setting their level to a more acceptable level, we would like to raise the following concerns:

Thresholds per asset class

Breaching a threshold for one asset class should only call for central clearing of the derivatives in the asset class in question. Only transactions of a specific asset class breaching the threshold have a potential systemic relevance, not all transactions of the market participant. According to our opinion, the current wording of the DTS is not in line with EMIR level 1, which clearly stipulates in Recital 31 that the "values of the clearing thresholds […] are determined **taking into account the systemic relevance of the sum of the net positions and exposures** […]". While breaching a threshold in one asset class can be considered a sign of systemic relevance in the market of that specific asset class, it does not naturally imply that the company as a whole has a systemic relevance in all the markets of all other asset classes it trades.

If more than five asset classes will be defined, as outlined during the ESMA hearing on July 12th, 2012, the rationale in terms of systemic relevance of clearing all transactions across all asset classes is even thinner.

For commodity trading firms which will be in breach of the commodities threshold and will need to clear all other transactions, this rule will have a significant impact on treasury activities and dramatically increase the cash liquidity requirement for commodity firms – effectively creating a 'clearing cliff edge'. It would indeed require commodity firms to clear all their foreign exchange and treasury trades entered into for commercial purposes or hedging, which do not contribute to systemic risk, but rather constitute risk mitigating tools for those firms.

To ensure a level playing field on the global derivative market, we prefer aligning the EMIR clearing threshold with the thresholds defined by the US CFTC for the "Major Swap Participant" (MSP), especially the calculation of the "potential outward exposure" which we would regard as equivalent to the approach proposed by ESMA. CFTC standards limit the clearing obligation for derivatives of the asset class or classes where the threshold was exceeded (See CFTC / SEC, l.c., p. 574).

Entity vs. group-level threshold breach

ESMA should make clear in the DTS that the breach of a threshold by one entity of a corporate group should not lead to an obligation for the entire corporate group to clear all of its OTC derivatives.

EMIR provides that: "Where a non-financial counterparty takes positions in OTC derivative contracts and those positions exceed the clearing threshold as specified under paragraph 3, **that** non-financial counterparty shall […] clear all relevant future contracts […]". EMIR stipulates in Article 10 (3) that the clearing threshold is a group threshold in order to avoid the loophole that positions in OTC derivatives are allocated across several entities which then can stay below the threshold. The intention of this provision was not to make the entire corporate group subject to the clearing threshold in respect of all of its OTC derivatives. A breach of threshold in a single asset class by a single entity should not force an entire corporate group to clear all its positions in this asset class or in any other OTC derivative classes which do not contribute to increasing systemic risk for the group.

Forcing an entire corporate group to clear all OTC derivatives transactions because of a breach of threshold in a single asset class by a single entity would also contradict the reality of an effective risk management of the real economy, as it is common for corporate groups to transfer all relevant commercial risks to a single group entity which then trades all relevant OTC derivatives on behalf of the entire corporate group to which it belongs. This would again have the detrimental impact of requiring commodity firms to clear all their foreign exchange and treasury trades entered into for commercial purposes or hedging, and thereby becoming detrimental to internal risk mitigation strategies.

Metric

ESMA proposes to use gross notional value of the outstanding OTC derivative contracts as a measure for determining where companies are against the clearing threshold. According to ESMA, the main reason for favouring "gross" above "netted" values is that the former would be easier to calculate and implement for (especially smaller) companies. As calculating netted exposures is at the basis of even the simplest trading system, we do not feel that this should be a decisive argument to choose for one or the other approach.

The wording of Article 10 (4) (b) EMIR states that the clearing threshold "shall be determined taking into account the systemic relevance of the sum of **net** positions and exposures […]". This wording clearly speaks in favour of taking into account the effects of netting of positions under bilateral netting agreements. Recital 31 EMIR also weighs in by mentioning that the clearing threshold should take the "sum of net positions and exposures per counterparty and per class of OTC derivatives". Therefore, we think that the DTS are not in line with the text of EMIR level 1 on this point. **The DTS should limit the positions relevant for the calculation of the clearing threshold to the "net notional amount per class of OTC derivatives"**.

The gross notional value does not represent a measure of the risks underlying the OTC derivatives entered into. Calculating positions on a net basis would reflect non-financial companies' exposure to counterparties in a more realistic way, and would better represent the actual systemic relevance of a specific counterparty.

At the very least, the following types of netting should be allowed:

i) Intra-group positions – as we understand the requirement under EMIR Level 1 Art 10(3) to "include all the OTC derivatives contracts entered into…. within the group" – where two subsidiaries of the same parent

company enter into a contract resulting in opposite positions between them, and therefore net zero exposure outside the group;**

ii) **Offsetting positions with the same counterparty in the same contract or within a master netting agreement, where upon default of a counterparty, the non-defaulting counterparty's claim would be based on the net position.** Many European legal frameworks recognise the enforceability of close-out netting for contracts on financial instruments upon an insolvency event affecting counterparty. Taking netted positions into account for the calculation of clearing thresholds in the DTS would, therefore, be consistent with applicable insolvency rules and would reflect the proper impact of an insolvency event on the market.

This would not collide with the objective of simplicity of implementation laid out in Recital 16.

As a general remark, it is mentioned in Recital 16 that the "gross" notional value of the OTC derivatives contracts should be the basis for calculating whether a counterparty is in breach of the threshold(s). This is not re-stated in Article 2 NFC. Whatever becomes definitive (gross or net notional value) should be mentioned in Article 2 NFC for the sake of clarity.

Threshold level

The phase-in approach taken by ESMA seems appropriate. **We support ESMA's intention to review the thresholds on a regular basis in paragraph 66 of the introduction to the DTS**. Such reviews should take into account commodities price inflation and overall growth of the global OTC derivatives market (to continue reflecting appropriate systemic levels). However, this approach should be combined with a precaution of not starting with a threshold which is too low in value and then bound to slowly rise to an appropriate level. Instead the starting point should be a high threshold level with a possibility to lower it down to an appropriate level.

Indeed, in our view, ESMA fails to justify the proposed level of the clearing threshold. At the moment it is not proven - or at least reasonably argued - by ESMA, why companies above a level of 3 billion Euros are systemically relevant and thus, should be captured by the clearing threshold. As long as the threshold is not based on systemic importance, there is a serious risk that also non-systemically important market parties will unnecessarily be captured. The additional cost and liquidity constraints that are triggered by mandatory clearing will result in less market liquidity on traded markets, less competition, less room for investments in new generation capacity, higher dependency on financial markets and, in the end, will lead to higher systemic risk.

EFET therefore argues that ESMA should base the level of the clearing threshold on real transaction data that will be gathered under the EMIR reporting requirements. This data will allow for solid calculations and analysis that will ensure the threshold is set at a systemic level. In the coming years such a threshold can be regularly reviewed (upward and downward) as ESMA proposes in paragraph 66 iii V.

A threshold set at EUR 3 billion in notional value for commodity derivative positions remains too low. By setting it at such a low level implies that the operation of the clearing threshold is effectively reduced down to a hedge exemption. This was never the intention of EMIR (i.e. that all non-hedging transactions should be centrally cleared) and the setting of an artificially low clearing threshold should not be used as a mechanism for introducing this policy. In any case, if the clearing threshold should be calculated on the basis of gross notional value per counterparty, we consider the amount of EUR 3 billion as too low. There are energy markets (i.e. German gas market), where the common traded tickets are so large that even small energy companies active in this market may easily breach the threshold of EUR 3 billion, especially if they are active in more than one commodity (i.e. gas and power).

We would point out that for commodity derivatives, if we were to treat 'notional value' as being notional amount multiplied by price, threshold positions would fluctuate with prices. As such we feel that the threshold level for commodities should allow for a certain degree of price volatility and therefore be set at a higher level.

<u>Position calculation</u>

The DTS should explicitly mention how the clearing thresholds ought to be calculated. For instance, how is the notional value of a floating price swap, with daily/weekly settlements to be determined in order to calculate the (gross) notional value of a counterparty's rolling average positions in OTC derivatives over 30 working days?

To be in line with the rules of CFTC, the DTS should allow adjusting the relevant exposure to certain risk multipliers reflecting the risk profile of the type and residual maturity of the derivative (e.g. 0.075 for FX derivatives with a residual maturity of over five years). This would also help alleviate the problem that the notional value does not appropriately take into account the risk of the derivative portfolio in question.

<u>Notification of clearing threshold breach</u>

According to Article 10 (1)(a) EMIR, a counterparty has to inform ESMA and its NRA if it is over the threshold(s) on the first day it breaches the 30-day rolling average threshold.

As EMIR regulates bilateral agreements, it should be considered how two parties on each side of the threshold should interact. The DTS do not provide details on how firms below the threshold in practice are expected to interact with Non Financial Counterparties above the threshold (and vice-versa), as well as with financial institutions (both in terms of derivative contracts which are eligible for clearing and contracts not eligible for clearing).

It must be resolved whether a central registry should be put in place in order for one counterparty to know whether another counterparty is above or below the threshold (and must meet the clearing or risk mitigation obligation). Such a registry could be managed by ESMA, as the necessary information regarding threshold breaches, at least for entities incorporated in the EU/EEA, is being provided to ESMA under Article 10 EMIR.

The challenge remains for third country counterparties with whom clearing may or may not apply. Having no reasonable means of verifying that a third country entity would be subject to the clearing obligation if it were established in the Union, Non Financial Counterparties above the clearing threshold should be allowed to rely on self-certifications by their counterparties in order to be informed of any change of their trading volumes. We seek confirmation by ESMA that such procedure is sufficient to ensure compliance by any European counterparty with the provisions of EMIR on the clearing obligation with third country entities.

In addition, the technical standards need to give clarity to counterparties regarding the situation when they move back below the threshold, therefore de-triggering the clearing obligation as explicitly allowed in EMIR. There is no recognition in the DTS of how this process will work. We urge ESMA to provide clarity on this process in the final technical standards. EFET would welcome an opportunity to discuss this with ESMA given that it has been overlooked in the DTS – and should be subject to consultation as for all other aspects of the technical standards. As for now, it is still largely unclear how to navigate in a landscape of counterparties with different and possibly changing legal obligations.

C. Criteria for establishing which derivative contracts are objectively measurable as reducing risks (from page 14 and 73 onwards)

We appreciate that ESMA has further clarified the definition of risk mitigating OTC derivatives by including proxy hedging. However, we would like to reiterate the following suggestions for improvement:

Definition of hedging

EFET welcomes the clarification that risk mitigating OTC derivatives may be defined either by using accounting standards or by using the more general definition contained in the DTS. However, the possibility to use local accounting rules (GAAP) as specified under Recital 14 should be clearly stated in Article 1 NFC.

In the definition of Article 1 (a) NFC, we would like to add “cash flow” to the list hedge items (“[…] commodities, liabilities or *cash flows* that the non-financial counterparty […]”) because the reference to the commodities only might not fully capture the hedging activities of energy companies. The additional wording should provide more clarity.

Furthermore, we request ESMA to stay coherent with a key principle when defining hedging. Economic or commercial reality should determine the norms (accounting rules) and not the contrary; accounting should not determine firms’ commercial behaviour or the economics of energy trading. In addition, given that international accounting rules are under revision and national ones quite diverse, it is difficult to foresee what could be the outcome and impact on us at this stage.

Portfolio Approach

According to Recital 30 EMIR, due “consideration should be given to whether an OTC derivative contract is economically appropriate for the reduction of risks in the conduct and management of a non-financial counterparty”. So far ESMA only explicitly considers proxy hedging as risk-mitigating in accordance with the proposed standards. Although EFET welcomes the fact that proxy hedging is now included in the definition of hedging, the technical standards should also acknowledge risk-mitigating strategies like macro- and portfolio hedging which are wide-spread strategies among many firms and commonly recognized in the auditing practice. To gain legal certainty, it should be clarified that derivatives used in a macro or portfolio hedging strategy comply with the requirement laid down in Art. 1 NFC, as the wording "[…] by itself or in combination with …" leads us to believe.

Definition of speculation, investment or trading

In Article 1 NFC (2), the terms "speculation, investing or trading" are not defined, which is likely to generate confusion. The term "trading" literally means buying or selling which can be applicable both to speculative and risk reducing activities. EMIR does not refer to these concepts when defining which contracts are objectively measurable as reducing risk directly related to the commercial or treasury financing activity. We suggest that the reference to speculation, investing or trading should be deleted altogether, or at least that Article 1 (2) NFC is amended with the following wording:

> *2. For the purpose of Article 10(3) of Regulation (EU) N0 X/2012 [EMIR], a derivative contract entered into by a non-financial counterparty or by other non-financial entities within the group to which the non-financial counterparty belongs shall not be considered as objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of the non-financial counterparty or of that group* ***if it is entered into primarily for the purpose of speculation****.*

There is, however, no need to further disaggregate the classification of transactions – they can either be classified as reducing commercial or treasury risk or not.

D. Risk mitigation requirements for non-cleared contracts: (page 16 and 73 onwards)

Making better use of existing risk mitigation arrangements

With regard to risk mitigation requirements for non-cleared contracts we note that ESMA is proposing a set of measures that could help reduce (counterparty) risk for these non-cleared trades. Although these measures can in essence be quite useful, they also seem to duplicate existing mechanisms (e.g. such as the EFET, ISDA, DRV agreements) that are proven and effective. This industry standard documentation already covers many concerns that are voiced in the ESMA discussion paper, notably with regard to portfolio reconciliation, dispute resolution, and confirmation.

Although we appreciate that ESMA representatives have indicated during the open hearing on 12 July 2012 that the existing EFET and ISDA arrangements are useful in this regard, we would preferably see that the EFET and ISDA agreements are adapted (where necessary) to comply with the requirements of the DTS and that market parties that trade under these arrangements are compliant with the risk mitigation requirements that stem from EMIR. In this manner, individual companies would not have to go through the ESMA requirements individually but would be certain that they comply with the EMIR rules as long as they trade under the EFET or ISDA agreements.

Furthermore we have noticed that, particularly on operational risk mitigation techniques, the DTS are pretty light on the definitions of many terms (e.g. portfolio confirmation, reconciliation, compression etc). With respect to planning the compliance implementation at companies, it would be helpful to know if ESMA intends to define these terms further.

Timely confirmation

Although we appreciate that ESMA decided to extend the confirmation period in general to two days for non-financial companies not exceeding the clearing threshold, we are of the opinion that this is still too ambitious. While non-financial companies are in many cases able to confirm their trades quite quickly, the length of the confirmation process heavily depends on i) the sophistication of the counterparty, and ii) the specifics of the transaction. We therefore urge ESMA to extent the confirmation period for non-financial companies to four days.

While larger and more sophisticated parties increasingly use electronic confirmation matching and have proper incentives to confirm their trades as soon as possible, smaller and less sophisticated firms that do not electronically confirm their trades will often need more than two days for their confirmations. Since the buy- and sell side are dependent on each other, it would be very difficult for the buy-side company to confirm a trade in two days when it takes the selling counterparty nearly two days to hand over the respective contract. Next to that, the confirmation process of non-standardised product transactions is also quite lengthy.

Hence, **the best endeavours confirmation period for these non-financials should be extended to four business days after the execution.** There should also be no differential treatment between non-financials that are above or below the threshold in this respect, given the fact that non-financials can move back below the threshold de-triggering the clearing obligation.

In addition, ESMA should take into consideration that the confirmation of more complex and non-standardised product transactions cannot be processed in the above mentioned time period, because of 'longform confirmations', with additional (not initially mentioned) legal terms included in the confirmation, or involvement of different departments within a company. For these transactions, the confirmation will take five to ten business days. For these contracts the DTS should stipulate that the confirmation should include only the essential (economic) conditions of an OTC derivative contract within the prescribed confirmation period. These economic terms are generally exchanged by the counterparty in order to value the derivative trade, as equivalent to the full confirmation. Complete transaction details can subsequently kept on record by the counterparties and can be requested where necessary.

Finally, ESMA should provide more clarity on the exchange of confirmations and non-compliance of a counterparty. ESMA should clarify what is expected of and what should a compliant counterparty expect when its trading partner does not reply to the confirmation and does not return the confirmation within said deadline, for which ever reason.

Portfolio reconciliation

Portfolio reconciliation is about matching the economic- and valuation data of outstanding trades. With regard to portfolio reconciliation we ask ESMA to give more clarity on the following topics:

- What type of counterparty agreements must be in place in order to perform portfolio reconciliation and what would be the implementation timeline for those agreements?

As most contracts are traded under standard framework agreements we would recommend amending those agreements with a respective clause.

- In case of mandatory reconciliation, what would be the status of OTC derivative contracts entered into before the entry into force of EMIR, but still outstanding? To our understanding these contracts should be excluded from portfolio reconciliation as reconciliation only makes sense if it covers the complete period of the trade
- What will be the format for data exchange? There are many different IT infrastructures installed within non-financial counterparties, so we would suggest ESMA to develop a set of minimum requirements (e.g. start date, end date, volumes, price, location, underlying) while all additional information is negotiated bilaterally.
- What is the difference in practice between the reconciliation requirement and the daily M-to-M requirement in EMIR Art.11.2?

Next to the threshold proposed by ESMA in article 3 on page 74 (500 outstanding-, and not centrally cleared derivative contracts), EFET would like to reiterate that portfolio reconciliation should only be required as of a minimum number of outstanding transactions with a certain counterparty.

The two portfolio-thresholds mentioned in Art. 2 (4) RM of 300, respectively, 300 to 499 would impose on small and medium sized firms an unintended burden, which perform only few derivatives transactions. For the benefit of those firms we propose a new 3rd threshold of a certain lower number of transactions between the counterparties. These firms shall – if at all appropriate – conduct a portfolio reconciliation once a year.

We would also like to point out that a daily reconciliation with all portfolios bigger than 300 trades, as proposed on page 18 III.VI §81 of the DTS, implies significant investments in additional resources or purchase of a system (e.g. TriOptima). We therefore consider that a weekly reconciliation would be sufficient (if at all), given the time already needed to analyse the results of the reconciliation.

Considering the requirements in Recital 19, the data expected for the reconciliation being only relevant for standardized products, we would appreciate clarifications or minimum requirements by ESMA on the modalities of conduct of portfolio reconciliation, especially with regard to non-standardized agreements.

Portfolio Compression

The concept of portfolio compression (offsetting / netting trades between more than two counterparties) is still relatively new to the energy sector. In fact, there is no current market wide standard for the timely exchange of position data in the energy sector. Also the DTS give limited information on how this should work.

We welcome the approach of ESMA not to establish a hard obligation for portfolio compression, but to allow counterparties to assess the opportunity to conduct a portfolio compression. In this context, we agree that the reasons for not conducting a portfolio compression should neither be actively notified, nor be agreed with ESMA and/or NRAs. It is sufficient if the counterparties can explain the reasons upon request of the regulators. Nevertheless, the process to explain the reasons for the deviation to ESMA and/or NRAs should be kept as lean as possible especially for portfolios of non-financial companies including almost exclusively risk-mitigating derivatives. A clear exclusion of hedging deals in the wording of the DTS would be helpful and avoid the need for long explanations and possible discussions. It would be beneficial for firms and regulators to provide a non-exhaustive list of cases in which a portfolio compression is “not appropriate”. For example, portfolio compression makes no sense for portfolios between counterparties with only few positions to be netted and closed-out.

Dispute resolution

In general, we are very satisfied with the dispute resolution mechanism provided by existing contract standardisation such as EFET or ISDA Master Agreements. These master agreements adequately reflect the need for companies to maintain detailed procedures for investigating, recording and resolving disputes.

Although we agree that the most rapid collateral dispute resolution possible should apply, a mandated resolution within a five day timeframe is in practice unfeasible. In accordance with the existing ISDA Master Agreement provisions we would suggest a thirty day timeframe, which is very strict but feasible. Some reasons for allowing more time to resolve a dispute include:

- The portfolio reconciliation results must be analysed to determine the root causes of the dispute. This can take time to accomplish. If the process is conducted across different time zones, all aspects of the resolution process will take longer.
- Some disputes require trader-to-trader discussion to resolve. Others may need to be escalated to senior management for further discussion.
- A small number of disputes prove to be intractable throughout the foregoing process and must be resolved via an independent reference process such as a market poll or another agreed-upon dispute resolution methodology. All polling processes require time to prepare, execute and then assess results. Depending on the product involved, substantial effort may be required to price transactions. The time to execute a poll for a complex structured derivative may be measured in hours, or even days, as time is required to build and populate a valuation model.

Next to that we argue that third party arbitration and/or market polling are not the only sufficient options to settle collateral disputes. Parties to a collateral dispute may view third party arbitration as an option that is always available to two consenting firms, but only to be used after exhausting all other potential remedies. Third party arbitration is challenging, as it is not easy to find adequate arbitrators who are able to accurately price bespoke transactions that are generally used for risk-mitigating purposes.

We would suggest clarifying that the dispute reporting obligation refers only to disputes regarding OTC derivative transactions between financial counterparties, and not between a financial counterparty and a non-financial counterparty, as the non-financial counterparties are in general not systemically relevant. Notwithstanding the aforementioned, if disputes between financial counterparties and non-financial counterparties shall be reported by the financial counterparty, we would suggest that the financial counterparty has to consult the non-financial counterparty before providing a dispute resolution report to the competent authority. Finally, we would suggest extending the timeframe for the reporting to thirty days or more as long as they are intended to be reported on a) a monthly frequency, b) at the portfolio (and not the trade) level and c) reflect the cumulative age of the dispute (meaning the collateral dispute continues to age if the dispute swings from one disputing party to the other).

E. Exemptions for Intra-group transactions (from page 21 onwards)

Although part of the regulatory standards with regard to intra-group transactions still have to be drafted, it should be avoided that intra-group transactions are made subject to several EMIR requirements without actually improving market functioning or reducing (systemic) risk.

Precedence of the hedging exemption

Although it has been stated during the public hearing on 12 July 2012, we suggest, that ESMA more explicitly clarifies through the Q&A mechanism that the definition for "risk mitigating OTC derivatives" prevails over the intra-group exemption. Intra-group transactions that are carried out for risk mitigating purposes and do not have any effect on the market should be more clearly excluded from both counting towards the clearing threshold, any requirement for clearing in the event a non-financial firm breaches the threshold, any reporting requirements and additional risk mitigation requirement.

Notification of intra-group transactions

The "notification" requirement for intra-group transactions pursuant to Art. 7 RM should not mean that each and every transaction should be notified together with the details of the transaction, because this would mean in practice an additional transaction reporting mechanism which is not intended in this context. Instead firms should be allowed to adopt a more lean approach according to which they only notify the general description for those contracts. Therefore, ESMA could develop more general standard criteria in Art. 7 RM instead of the very detailed requirements of the current version.

In addition, we question the usefulness of notifying intra-group transactions that are carried out for the sole purpose of mitigating and aggregating risks within a company. Because these transactions do not lead to counterparty risk toward third parties (nor to systemic risk) and don't have any effect on the market (price), we propose to keep these notifications as lean as possible.

Intragroup transactions that are traded over the market could have to be notified to the regulator, but intra-group transactions that are only based on internal transfer pricing arrangements (ITP's) need to be clearly excluded from the notification requirements. Furthermore, a firm should always have the choice to report on behalf of the other group-entities.

Where information on intra-group transactions needs to be disclosed to the public these notifications should be on aggregated level only and in anonymous way. Market participants should not be able to draw conclusions concerning specific companies' risk-mitigating strategy or other confidential information.

Although the technical standards in relation to the criteria to assess the applicability of the intra-group exemption (paragraph 100 (a) of the introduction to the DTS) will still have to be developed jointly by the EBA, EIOPA and ESMA, we want to stress that it should be left to the own assessment of the company to prove that it complies with the respective requirements which are the prerequisite to qualify for the exemption.

Procedural aspects

Finally, as we expect a vast number of notifications for intra-group exemptions to reach NRAs, which would need to go through lengthy analysis process, it is very important that ESMA clarifies that intra-group transactions are not obliged to be bilaterally collateralised until the notification process is finalised. Otherwise, this would lead to the paradoxical situation that an intra-group transaction has to be collateralised until the exemption becomes valid.

F. Collateral requirements (from page 36 and 113 onwards)

Commercial bank guarantees

ESMA recognised that many respondents to the March 2012 consultation on the ESMA discussion paper asked to expand the set of eligible collateral in order to avoid a "collateral squeeze" that would disrupt the market. Nevertheless, the criteria proposed in the DTS for commercial bank guarantees (CBG) are very similar to the ones proposed in the discussion paper, which means that there usability is strongly limited. We strongly believe that the use of CBGs – because only non-financial (and non-systemic) parties are allowed to use them – should not be restricted as much as ESMA proposes.

We mainly have doubts with regard to the requirements for CBGs that ESMA proposes on page 113 in Chapter XI, Article 3 subsection c. vii and subsection c. viii.

With regard to subsection c. vii, the proposed DTS would imply that one often cannot use a bank guarantee from one's preferred bank. For example: a company which actively trades on the Nordic market would most likely also use a bank that is active on the Nordic market to support its clearing arrangements on Nordpool. If ESMA reasons that such banks provide "essential services to the CCP", non-financials would not be allowed to use CBGs from these banks and would have to rely on banks that are not active in the region and would thus offer CBGs at higher rates. In addition, ESMA requirement on CBGs would have detrimental practical implications for Nordic counterparties, as clearing of an important number of electricity contracts traded in the Nordic areas is already usual and mandatory. With the requirements in the DTS, smaller counterparties would be complied to post cash collaterals to the CCPs, which they cannot afford.

Furthermore, the DTS now state on page 113 c. viii that the bank guarantees should be fully backed by collateral that can be realised on a same day basis. This requirement makes the use of bank guarantees very expensive. This would exclude market parties that cannot fully back or collateralise their bank guarantees, and hence would lead non-financial companies not being able to use CBGs anymore to cover their (margining) exposure at exchanges. Given the importance of CBGs for non-financial companies and the fact that they are not systemically relevant, we doubt the usefulness of these measures.

ESMA must acknowledge the different nature of financial counterparties - and especially banks - compared to non-financials, in particular in regard to access to cash collateral. Banks have access to cheap central banks' liquidity as part of their core business, while non-financials may only increase expensive lines of credits, if this is possible at a reasonable cost in what is already a liquidity constrained world.

We advocate the need for the CCPs to maintain flexibility in determining the requirements for accepting CBG, depending on the level of risk embedded in the underlying product that margin requirements are required to cover. While we approve the proposal that a CCP would be required to assess the suitability of a guarantee, we believe that asking for the involvement of the board of the CCP to ratify on the suitability of the guarantor and notify the competent Authority is unnecessary and disproportionate. Moreover, imposing such a condition in addition to the other conditions is unjustified.

We reiterate the view that ESMA should propose rules sufficiently attractive for non-financials in order to incentivise more central clearing. Indeed, if collateral requirements are reasonable – and CBGs can be accepted – more non-financial counterparties will decide to clear and this would reduce counterparty risks. Restricting the use of CBG's on the other hand, as has been proposed by ESMA, will force market parties towards non-standardised products that don't need to be cleared. Therefore, for coherence reasons, we would suggest to align the collateral obligation of the DTS with the Basel III / CRR rules concerning the liquidity coverage ratio which requires ten percent liquidity coverage for outstanding credit lines for non-financial companies.

G. Transaction reporting (from page 44 and 137 onwards)

<u>Trade Repositories: general remarks</u>

We appreciate that ESMA proposes a gradual implementation of the reporting obligation of derivatives to Trade Repositories ("TRs"). Nevertheless the timetable proposed in the RTS does not seem to be consistent with the intention to begin reporting as soon as practicable and with the amount of time necessary to counterparties to establish IT projects enabling the reporting of information of sufficient quality. Indeed the level of details of the RTS is absolutely insufficient to initiate an implementation project and this will be possible only when the TRs will make available all the necessary details. ESMA must take into consideration the impact that derivatives reporting will have on non-financial counterparties. If financial counterparties are characterized by a high level of standardisation in post trading activities, non-financial counterparties will have instead in most of the cases to implement a full set of functionalities that today are not established.

The implementation period for reporting should not start at the moment of the registration of a trade repository with ESMA, but when the Trade Repository will make available all the technical implementing details necessary to establish a reporting mechanism. Once these details are available to reporting entities, a period of at least 18 months including a test period should be allowed before the kick-in of the obligation.

Moreover the proposals regarding the back-loading of contracts entered into before the date of entry into force of EMIR do not seem appropriate to allow proper extrapolation of the data to be transmitted to trade repositories. Indeed, until the final fields and formats will not be available, it will not be possible to initiate data collection. Therefore, we propose that the reporting of contracts outstanding on the date of entry into force of EMIR should be reported within 12 months after the reporting start date for a particular asset class, according to our suggestion above.

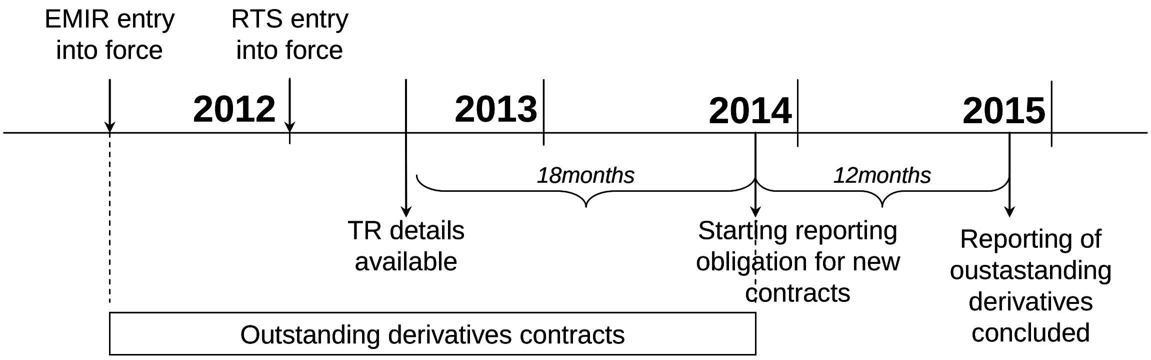

Figure 1: Proposal for the implementation timetable for reporting of derivatives

Third party delegation

EMIR stipulates that counterparties may delegate third parties to perform the reporting requirement. We reiterate our view that, in case of derivatives concluded through venues, platform operators should not only represent a possibility to perform transaction reporting, but they should be the primary source of information. This approach is the most reasonable in terms of costs for the society to implement uniform reporting requirements.

Detailed comments per article

Art 34:
EFET recommends ESMA to supply further detailed specifications and definitions in the energy/commodity field.

Art 157:
The ESMA text provides several rules on the timings applicable to reporting. It is EFET conviction that although a general timing is required and appropriate for most asset classes, a specific timing should be allowed for energy/commodities.

Art 245:
EFET strongly supports ESMA efforts to seek compatibility for reporting under EMIR with other regulatory reporting requirements (such as REMIT, MiFiID etc). This will ensure a more feasible implementation path with less overlap and operational burden for the reporting parties. It will also facilitate the re-use of TR databases between regulators so that double reporting is avoided.

Art 246:
We recommend ACER to supply additional material which details how this alignment exercise has been worked out, specifying the compatibility of ESMA definitions with other regulations and pointing at the exceptions and the rationale behind them.

Art 250:
As a general remark, EFET requested ESMA to provide more detailed specifications for the application of these fields in the energy/commodities sphere.

Art 254:
See remark on Art 246. The different datasets as specified by the regulations' transaction reporting requirements should be provided in a comparison table to facilitate the operational implementation. This additional information will have a positive effect on the implementation timing of the reporting parties.

Art 258:
EFET is in favour of using LEIs as counterparty identificators and proposes to use EIC codes as intermediary solution for the energy/commodity space awaiting the global implementation of these LEIs.

Art 263:
Although EFET acknowledges the use of widely spread standards, it is strongly convinced of the fact that the energy/commodity sphere requires distinct standard codes as already used in common energy/commodity market practices today.

Art 265:
See Art 258. EFET proposes to use EIC codes as interim solution for the energy/commodity sphere.

Art 268:
EFET proposes to use the taxonomy as is provided by ISDA (in reference with FpML) in combination with the energy standards and market practices (in reference with CpML).

Art 270:
EFET recommends using a gradual approach for UTIs in the energy/commodity sphere; such identifiers are only available on organized market places and trading venues and after an electronic confirmation process. The primary source of information is not necessarily available in the reporting parties' trading systems; the latter is only available upon the completion of the confirmation process which is contractually set as a period of maximum 3 days following the conclusion of the transaction.

Art 279:
EFET reiterates its request to add a comparison table towards ACER transaction reporting requirements. EFET welcomes the approach to have a specific set of fields for commodity derivatives.

Art 293:
See Art 270. EFET recommends to report confirmed transactions only in order to increase the quality of reported data and avoid an additional reporting burden on counterparties for having to report intermediate stages of the transactions.

Art 295:
See general remarks. EFET recommends to use the effective date on which a TRs able to report for energy/commodity transactions extended by 18 months to cover the implementation projects at the reporting parties.

Art 296:
EFET generally accepts this proposal provided this 2 year period start counting from the date onto which ESMA has provided all necessary implementation and technical specifications for the transaction reporting for energy/commodities.

Art 310 (ix):
EFET strongly supports this approach in order to avoid double reporting and to limit the implementation burden on reporting parties.

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Annex II: EFET comments on the details to be reported to trade repositories (Article 9 of EMIR)

Following the requirements in Article 9 of EMIR, market parties will have to report trade data to trade repositories. The table below indicates which Counterparty and Common Data ESMA envisaged to be reported. The EFET comments to these proposals can be found in the table below.

	FIELD	DETAILS TO BE REPORTED	EFET Comments
	Parties to the contract		
1	Reporting timestamp	Date and time of reporting.	OK
2	C/P ID	The reporting counterparty shall be identified by a unique code or, in the case of individuals, by a client code.	Reporting counterparties will be identified by a unique code identifier. No guidance is given on the naming convention. EFET advises ESMA to use EIC codes in line with existing protocols for EFET confirmation matching and European Transmission System Operator (ETSO) nomination standards. A new counterparty ID distinct to EIC codes will generate significant development for firms' existing systems.
3	ID of the other C/P	Unique identifier for the other counterparty of the contract.	Reporting counterparties will be identified by a unique code identifier. No guidance is given on the naming convention. EFET advises ESMA to use EIC codes in line with existing protocols for EFET confirmation matching and European Transmission System Operator (ETSO) nomination standards. A new counterparty ID distinct to EIC codes will generate significant development for firms' existing systems.
4	Name of C/P	Corporate name of C/P, i.e. name of financial C/P; non-financial C/P; or individual.	Further specifications required (naming conventions etc)
5	Domicile of C/P	Information on the registered office, consisting of full address, city and country.	Further specifications required (naming conventions etc)

6	Corporate sector of C/P	Nature of the company activities / status (bank, insurance company, etc.).	OK
7	Financial or non-financial nature of C/P	Indicate if the C/P a financial or non-financial counterparty in accordance with Article 2 (8,9)of Regulation No (EU) No xx/2012 [EMIR].	OK
8	Broker ID	In case C/P uses a broker to execute the contract, this broker shall be identified by a unique code.	Where a counterparty uses a broker to execute the transaction, this will be identified by a unique code. No guidance is given as to the naming convention that should be used. EFET advises ESMA to use EIC codes in line with existing protocols for EFET confirmation matching. A new broker ID distinct to EIC codes will generate significant development to existing systems.
9	Reporting entity ID	ID of the reporting entity.	Cfr nr 2
10	Clearing member ID	In case of give-up.	No details have been provided on the identifier for the naming convention. Modifications to third party exchange traded platforms used by market participants for the trade capture of cleared products will be required to identify and report the ID of the clearing member. This information is currently not held and will require significant systems development.
11	Beneficiary ID	If the beneficiary of the contract is not a C/P to this contract it has to be identified by a unique code or, in case of individuals, by a client code.	Beneficiaries will be identified by a unique code identifier. No guidance is given on the naming convention. EFET advises ESMA to use EIC codes in line with existing protocols for EFET confirmation matching and European Transmission System Operator (ETSO) nomination standards. A new counterparty ID distinct to EIC codes will generate significant development for firms' existing systems.

12	Trading capacity	Identifies whether the contract was executed on own account (on own behalf or behalf of a client) or for the account of, and on behalf of, a client.	EFET members generally do not currently classify or tag a transaction as to who the Principle and Agent is – fields which will require further definition with significant new systems development to capture the expected information.
13	C/P side	Identifies whether the contract was a buy or a sell from the reporting C/P's perspective. This field shall be left blank for contracts where the relevant information has been provided in field No. 37 (Direction).	OK
14	Trade with non-EEA C/P	In case the C/P has entered into a trade with a non-EEA C/P who is not subject to the reporting obligation.	It is difficult to see how reporting of non-EEA counterparties and determining whether they are subject to reporting will work, as we will not be a database of reporting eligible counterparts.
15	Directly linked to commercial activity or treasury financing	For non-financial C/P; Information on whether the contract is objectively measurable as directly linked to the non-financial counterparty's commercial or treasury financing activity, as referred to in Art. 10(3) Regulation No (EU) No xx/2012 [EMIR].	HIGHLY PROBLEMATIC INFORMATION, It is not possible to identify individual trades in this way as hedging is generally undertaken at a portfolio level. See comments in the response to the consultation paper.
16	Clearing threshold	For non-financial C/P; information whether the counterparty is above the clearing threshold referred to in Art. 10(3) Regulation No (EU) No xx/2012 [EMIR]	This will only be possible if firms monitor their position against the threshold on a real time (or daily) basis which will generally be dependent on how they implement the definition of hedging. As pointed out in our main response firms need to retain flexibility and as such it would not be appropriate to force companies to a particular solution through the reporting requirements.

	Section 2a - Contract type		
1	Taxonomy	The taxonomy used for describing the classification of the reported contract.	Reporting counterparties are requested to use taxonomy for describing the classification of the reported contract. No guidance is given on the naming convention which states it has to be defined either by the industry or ESMA.
2	Product ID	The contract shall be identified by using a unique product identifier.	Reporting counterparties are requested that contracts are identified by unequivocal identifiers. No guidance is provided on this – please see our main response for a potential way forward on this issue.
3	Underlying	The underlying shall be identified by using an unique identifier for this underlying. In case of baskets or indices, an indication for this basket or index shall be used where an unique identifier does not exist.	Limited guidance is provided and it is not clear how ISO 6166 could be utilised. For baskets and indices ESMA advises to use an indication as the identifier. This is open to ambiguity and interpretation and clear guidance from ESMA is required in order to implement this requirement.
4	Currency	The currency of the notional amount or the currency to be delivered or, for currency derivatives, the currency to be delivered.	OK
	Section 2b - Details on the transaction		
5	Trade ID	An internationally agreed UTI.	Generally, the trading platforms used by firms will generate their own unique trade ID. This will not correlate back to the counterparty. Therefore to come up with a unique identifier for a trade shared between two counterparties will require a fundamental change in current business process and systems. An industry wide process and

			system to achieve a uniform approach would also take more time to develop and implement. See remarks above (Art 270)
6	Venue of execution / OTC	The venue of execution shall be identified by an unique code for this venue, or that the contract was concluded OTC.	EFET will need to further investigate whether the code is consistent with current standards defined for market definition under the EFET EIC rules.
7	Price / rate / spread	The price per derivative excluding, where applicable, commission and accrued interest.	OK
8	Notional amount	Face value of the contract, i.e. value of the deliverables.	OK
9	Price multiplier	The number of derivatives represented by one contract.	OK
10	Quantity	Number of contracts included in the contract.	OK
11	Up-front payment	Amount of any up-front payment.	OK
12	Delivery type	Whether the contract is settled physically or in cash.	
13	Execution timestamp	The time and date a contract was executed or modified, indicating time zone.	OK
14	Effective date	Date when obligations under the contract come into effect.	OK
15	Maturity date	Date when contract expires / exercise date.	OK
16	Terminatio n date	If different from maturity	OK
17	Settlement date	Date of settlement of the underlying.	OK

18	Master Agreement type	Reference to any master agreement, if existent (e.g. ISDA Master Agreement; Master Power Purchase and Sale Agreement; International ForEx Master Agreement; European Master Agreement or any local Master Agreements).	No guidance is provided whether this is a unique identifier for different master agreements. ESMA needs to clarify the reporting requirement for this field.
19	Master Agreement date	Reference to the date of the master agreement version, if any (e.g. 1992, 2002, ...).	OK
	Section 2c - Risk mitigation / Reporting		
20	Confirmation	Whether the contract was electronically confirmed, non-electronically confirmed or remains unconfirmed.	Most industry participants that comply with EFET electronic confirmation matching adhere to an industry standard 3 day confirmation generation and matching rule. In light of this it is probable that most trades at the time of reporting will be unconfirmed.
21	Confirmati on timestamp	Date and time of the confirmation.	OK. Issue of 'dynamic' information i.e. status of details of transactions changing overtime.
	Section 2d – Clearing		
22	Clearing obligation	Whether the reported contract is subject to the clearing obligation under Regulation (EU) No. X/2012 [EMIR].	As indicated above, this will only be possible where firms monitor the position against the clearing threshold on a real time (or daily) basis. It may be easier therefore to simply classify whether a trade has been cleared or not (either voluntarily or due to being subject to the clearing obligation). If the more aggregated approach is taken this will still require developments to systems to capture this information. For OTC give-up trades to the

			Exchange the trade life cycle will require to be tracked and the clearing status updated.
23	Cleared	Whether clearing has taken place.	OK
24	Clearing timestamp	Time and date clearing took place.	OK
25	CCP	In case of a contract that has been cleared, the unique code for the CCP that has cleared the contract.	OK
26	Intragroup	Indicates whether the contract was concluded as an intra-group transaction, defined in [Art. 3] of Regulation No (EU) No xx/2012 [EMIR]	OK
	Section 2e- Exposure s		
27	Collateralis ation	Whether exchange of collateral occurred to cover the contract in accordance with Article 11 of Regulation No (EU) No xx/2012 [EMIR].	Highly problematic. It will not be possible to report this field.
28	Collateral basis	Whether the exchange of collateral occurred on a portfolio basis.	Highly problematic. It will not be possible to report this field.
29	Collateral typee	Type of collateral that is posted to/by a counterparty.	Highly problematic. It will not be possible to report this field.
30	Other collateral type	Any other type of collateral that is posted by a counterparty.	Highly problematic. It will not be possible to report this field.
31	Collateral amount	Amount of collateral that is posted by a counterparty.	Highly problematic. It will not be possible to report this field.
32	Currency of collateral	Currency of the amount of collateral that is posted by a counterparty.	Highly problematic. It will not be possible to report this field.

33	Other currency of collateral amount	Other currency of the amount of collateral that is posted by a counterparty.	Highly problematic. It will not be possible to report this field.
34	Mark to market value of contract	Revaluation of the contract, specifying the difference between the closing price on the previous day against the current market price.	Highly problematic/ESMA says only if the FC/NFC is obliged to do market-to-market
35	Mark to market date of contract	Date of the last mark to market valuation.	Highly problematic/ESMA says only if the FC/NFC is obliged to do market-to-market.
36	Master netting agreement	Type of master agreement in place covering netting arrangements, if different from the master agreement identified in field 18.	No guidance is provided whether this is a unique identifier for different master netting agreements. ESMA needs to clarify the reporting requirement for this field.
	Section 2f- Interest Rates	**If a UPI is reported and contains all the information below, this is not required to be reported**	
37	Direction	Whether the reporting counterparty is receiving or paying the fixed rate. In case of float-to-float or fixed-to-fixed contracts this field has to be filled as unspecified.	-
38	Fixed rate	Level of the fixed rate leg.	-
39	Fixed rate day count fraction	The actual number of days in the relevant fixed rate payer calculation period.	-
40	Fixed leg payment frequency	Frequency of payments for the fixed rate leg.	-
41	Floating rate payment frequency	Frequency of payments for the floating rate leg.	-
42	Floating rate reset frequency	Frequency of floating rate leg resets.	-

43	Floating rate to floating rate	An indication of the interest rates used which are reset at predetermined intervals by reference to a market reference rate.	-
44	Fixed rate to fixed rate	An indication of the interest rates used which do not vary during the life of the transaction.	-
45	Fixed rate to floating rate	An indication of the fixed and floating rate used.	-
	Section 2g - Currency	**If a UPI is reported and contains all the information below, this is not required to be reported**	**CD - Currency Derivative**
46	Currency 2	The cross currency, as different from the currency of delivery.	-
47	Exchange rate 1	Exchange rate at the moment of the conclusion of the contract.	-
48	Exchange rate 2	Exchange rate at the moment of the conclusion of the contract.	-
49	Value date	The date on which both currencies traded will settle.	-
50	Forward exchange rate	Forward exchange rate on value date.	-
51	Exchange rate basis	Quote base for exchange rate.	-
	Section 2h - Commodi ties	**If a UPI is reported and contains all the information below, this is not required to be reported**	
	General		
52	Commodit y base	Name of the commodity group.	Unclear how this information will be additional to Product ID and Underlying. We recommend against duplication.

53	Commodit y details	Details of the particular commodity.	No guidance given of information required. If this field is generally required we recommend ESMA use a standardised coding scheme. Existing standards should be used as far as possible.
54	Load type	Product delivery profile: baseload, peak, off-peak, block hours or other which correspond to the delivery periods of a day.	No guidance given of information required. If this field is generally required we recommend ESMA use a standardised coding scheme. Existing standards should be used as far as possible.
55	Delivery point or zone	Physical or virtual point where the delivery takes place.	No guidance given of information required. If this field is generally required we recommend ESMA use a standardised coding scheme. Existing standards should be used as far as possible (e.g. EIC Codes).
56	Delivery start date and time	Start date and time of delivery.	OK
57	Delivery end date and time	End date and time of delivery.	OK
58	Border	Identification of the border or border point of a transportation contract.	No guidance given of information required. If this field is generally required we recommend ESMA use a standardised coding scheme. Existing standards should be used as far as possible (e.g. EIC Codes).
	Energy		
59	Daily or hourly quantity	For energy commodities, daily or hourly quantity in MWh which corresponds to the underlying commodity.	No guidance given of information required. Is this a flag indicating how the field 'Quantity' is to be interpreted?
	Section 2i - Options	**If a UPI is reported and contains all the information below, this is not required to be reported**	

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60	Option type	Indicates whether the contract is a call or a put from the reporting counterparty's perspective.	OK
61	Option style (exercise)	Indicates whether the option may be exercised only at a fixed date (European, Bermudan and Asian style) or at any time during the life of the contract (American style).	OK
62	Strike price (cap/floor rate)	The strike price of the option.	OK
	Section 2j - Modificat ions to the trade report		
63	Action type	Whether the report: is reporting a derivative contract or post- trade event for the first time, it will be identified as ‘new’; modifies details of a previously reported derivative contract, it will be identified as ‘modify’ cancels a specific trade or post trade event, it will be identified as ‘cancel’; Contains any other amendment, it will be identified as ‘Other’.	OK
64	Details of action type	Where field 63 is reported as ‘other’ the details should be specified here.	OK

EFET would like to make an additional comment with regards to the Log requirements:

EMIR requests market participants to build a trail of amendments with relevant supporting information retained in a log to a previously registered trade. No information is provided to the level of detail required in the log. There is also no mention of trade versioning to track each amendment. The extensive and broad trade repository reporting requirements will mean there will be frequent amendments to report, significantly increasing the reporting obligation on firms. In light of this a more prudent approach should be undertaken of limiting the number of fields for the trade reporting requirements to the commercial terms of the trade only and therefore excluding such fields as confirmation and master agreement type.

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Annex III: Drafting amendments to DTS

Current version (ESMA)	***Proposed amendments***
Article 1 NFC **Criteria for establishing which OTC derivative contracts are objectively reducing risks**	*Article 1 NFC* **Criteria for establishing which OTC derivative contracts are objectively reducing risks**
1. For the purpose of Article 10(3) of Regulation (EU) N0 X/2012 [EMIR], an OTC derivative contract is objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group, when, whether by itself or in combination with other derivative contracts, and whether directly or through closely correlated instruments, it meets one of the following conditions:	1. For the purpose of Article 10(3) of Regulation (EU) N0 X/2012 [EMIR], an OTC derivative contract is objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group, when, whether by itself or in combination **<u>with other contracts including</u>** derivative contracts, and whether directly or through closely correlated instruments **<u>or based on generally accepted risk reducing management principles</u>**, it meets **<u>at least</u>** one of the following conditions:
a. it covers [the risks] arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the [ordinary] course of its business;	a. it covers **<u>any risk</u>** arising from the potential change in the value of assets, **<u>exposures</u>**, services, inputs, products, commodities, **<u>cash flows</u>** or liabilities that the non-financial counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring **<u>in the course of its business;</u>**
b. it covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in subparagraph (a), resulting from fluctuation of interest rates, inflation rates or foreign exchange rates.	b. it covers **<u>any risk</u>** arising from the potential indirect impact on the value of assets, **<u>exposures,</u>** services, inputs, products, commodities or liabilities referred to in subparagraph (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates **<u>or other variables including commodity prices, financial indices or more generally other non-financial items</u>**.
c. it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation	c. it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation

(EC) N0 1606/2002.	(EC) N0 1606/2002 **or to local Generally Accepted Accounting Principles (GAAP)**.
2. For the purpose of Article 10(3) of Regulation (EU) N0 X/2012 [EMIR], a derivative contract entered into by a non-financial counterparty or by other non-financial entities within the group to which the non-financial counterparty belongs shall not be considered as objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of the non-financial counterparty or of that group if it is entered into for a purpose that is in the nature of speculation[, investing or trading].	~~2. For the purpose of Article 10(3) of Regulation (EU) N0 X/2012 [EMIR], a derivative contract entered into by a non-financial counterparty or by other non-financial entities within the group to which the non-financial counterparty belongs shall not be considered as objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity of the non-financial counterparty or of that group if it is entered into for a purpose that is in the nature of~~ ~~**speculation.**~~

Current version (ESMA)	***Proposed amendments***
Article 2 NFC **Clearing thresholds** The clearing thresholds values for the purpose of Article 10 of Regulation N0 XXX/2012 [EMIR] shall be:	*Article 2 NFC* **Clearing thresholds** The clearing thresholds values for the purpose of Article 10 of Regulation N0 XXX/2012 [EMIR] shall be **set on the basis of the net position per class of derivative and are set at the following levels**:
a. EUR 1 billion in notional value for credit derivative contracts;	a. EUR 1 billion ~~**in notional value**~~ for credit derivative contracts;
b. EUR 1 billion in notional value for equity derivative contracts;	b. EUR 1 billion ~~**in notional value**~~ for equity derivative contracts;
c. EUR 3 billion in notional value for interest rate derivative contracts;	c. EUR 3 billion ~~**in notional value**~~ for interest rate derivative contracts;
d. EUR 3 billion in notional value for foreign exchange derivative contracts;	d. EUR 3 billion ~~**in notional value**~~ for foreign exchange derivative contracts;
e. EUR 3 billion in notional value for commodity derivative contracts and other OTC derivative contracts not defined under (a) to (d).	e. EUR **[higher threshold]** ~~**3**~~ billion ~~**in notional value**~~ for commodity derivative contracts; **f. EUR [•] billion in notional value for other OTC derivative contracts not defined under (a) to (e).** **Exceeding one of the above clearing thresholds shall trigger the clearing obligation only in respect of the**

	<u>relevant class asset.</u> **<u>Exceeding one of the above clearing thresholds by one legal entity shall only trigger the obligation for mandatory clearing by the same legal entity.</u>** **<u>The following contracts shall not count towards the assessment of non-financial counterparties position against the relevant thresholds:</u>** • **All transactions falling within the scope of the definition of OTC derivatives contracts objectively reducing risks pursuant to Art. 1** • **All transactions traded over regulated platforms, hence traded on Regulated Markets, MTF and OTFs** • **All transactions, concluded over regulated platforms or on OTC markets, which are voluntarily cleared** • **Collateralised derivative transactions** • **Intra group transactions subject to the specified exemption pursuant to Article [xx]** **<u>The clearing obligation for non-financial counterparties against the relevant thresholds are non-applicable after a period of 30 consecutive days for which a non-financial counterparty is below the relevant threshold and the required notification has been made to the relevant authority.</u>**

Current version (ESMA)	***Proposed amendments***
Article 2 RM Timely confirmation 1. This Article specifies procedures and arrangements for the purpose of Article 11(1)(a) of Regulation (EU) No X/2012 [EMIR]. 2. An OTC derivative contract concluded with a financial counterparty or a non-financial counterparty that meets	Article 2 RM Timely confirmation 1. This Article specifies procedures and arrangements for the purpose of Article 11(1)(a) of Regulation (EU) No X/2012 [EMIR]. 2. An OTC derivative contract concluded with a financial counterparty **or a non-financial counterparty that meets the**

the conditions referred to in Article 10(1)(b) of Regulation (EU) N0 xxxx/2012 [EMIR] and which is not cleared by a CCP shall be confirmed, where available via electronic means, as soon as possible and at the latest by the end of the same business day. 3. Where a transaction referred to in paragraph 2 is concluded after 16.00 local time, or when the transaction is concluded with a counterparty located in a different time zone which does not allow same day confirmation, the confirmation shall take place as soon as possible and at the latest by the end of the next business day. 4. An OTC derivative contract concluded with a non-financial counterparty that does not meet the conditions referred to in Article 10(1)(b) of Regulation (EU) N0 xxxx/2012 [EMIR], shall be confirmed as soon as possible and at the latest by the end of the second business day following the date of execution. 5. Financial counterparties shall have the necessary procedure to report on a monthly basis to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC the number of unconfirmed OTC derivative transactions referred to in paragraph 1 to 2 that have been outstanding for more than five business days.	**conditions referred to in Article 10(1)(b) of Regulation (EU) N0 xxxx/2012 [EMIR]** and which is not cleared by a CCP shall be confirmed, where available via electronic means, as soon as possible and at the latest by the end of the same business day. 3. Where a transaction referred to in paragraph 2 is concluded after 16.00 local time, or when the transaction is concluded with a counterparty located in a different time zone which does not allow same day confirmation, the confirmation shall take place as soon as possible and at the latest by the end of the next business day. 4. An OTC derivative contract concluded with **any** non-financial counterparty that **does not meet the conditions referred to in Article 10(1)(b) of Regulation (EU) N0 xxxx/2012 [EMIR],** shall be confirmed as soon as possible and at the latest by the end of the **forth** business day following the date of execution. 5. Financial counterparties shall have the necessary procedure to report on a monthly basis to the competent authority designated in accordance with Article 48 of Directive 2004/39/EC the number of unconfirmed OTC derivative transactions referred to in paragraph 1 to 2 that have been outstanding for more than five business days.

Current version (ESMA)	***Proposed amendments***
Article 2 RM Portfolio reconciliation 1. This Article specifies procedures and arrangements related to portfolio reconciliation for the purpose of Article 11(1)(b) of Regulation (EU) No X/2012 [EMIR]. 2. Financial and non-financial counterparties to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of	Article 2 RM Portfolio reconciliation 1.This Article specifies procedures and arrangements related to portfolio reconciliation for the purpose of Article 11(1)(b) of Regulation (EU) No X/2012 [EMIR]. 2. Financial **and non-financial** counterparties to an OTC derivative contract shall agree in writing or other equivalent electronic means with each of

their counterparties on the terms on which portfolios shall be reconciled. Such agreement shall be reached before entering into the OTC derivative contract. 3. Portfolio reconciliation shall be performed by the counterparties to the OTC derivative contracts with each other, or by a qualified third party duly mandated to this effect by a counterparty. The portfolio reconciliation shall cover key trade terms that identify each particular OTC derivative contract and OTC Derivatives 74 shall include at least the valuation attributed to each contract in accordance with Article 11(2) of Regulation (EU) N0 xxxx/2012 [EMIR]. 4. In order to identify at an early stage, any discrepancy in a material term of the OTC derivative contract, including its valuation, the portfolio reconciliation shall be performed: a. each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other; b. otherwise, at an appropriate time period based on the size and volatility of the OTC derivative portfolio of the counterparties with each other and at least: i. once per month for a portfolio of fewer than 300 OTC derivative contracts outstanding with a counterparty; ii. once per week for a portfolio between 300 and 499 OTC derivative contracts outstanding with a counterparty.	their counterparties on the terms on which portfolios shall be reconciled. Such agreement shall be reached before entering into the OTC derivative contract. 3. Portfolio reconciliation shall be performed by the counterparties to the OTC derivative contracts with each other, or by a qualified third party duly mandated to this effect by a counterparty. The portfolio reconciliation shall cover key trade terms that identify each particular OTC derivative contract and OTC Derivatives 74 shall include at least the valuation attributed to each contract in accordance with Article 11(2) of Regulation (EU) N0 xxxx/2012 [EMIR]. 4. In order to identify at an early stage, any discrepancy in a material term of the OTC derivative contract, including its valuation, the portfolio reconciliation shall be performed **by financial counterparties**: a. each business day when the counterparties have 500 or more OTC derivative contracts outstanding with each other; b. otherwise, at an appropriate time period based on the size and volatility of the OTC derivative portfolio of the counterparties with each other and at least: i. once per month for a portfolio of fewer than 300 OTC derivative contracts outstanding with a counterparty; ii. once per week for a portfolio between 300 and 499 OTC derivative contracts outstanding with a counterparty **iii. once per year for a portfolio below [xy] OTC derivative contracts outstanding with a counterparty.**

Current version (ESMA)	***Proposed amendments***
Article 3 RM Portfolio compression 1. This Article specifies procedures and arrangements related to portfolio compression for the purpose of Article 11(1)(b) of Regulation (EU) No	Article 3 RM Portfolio compression 1. This Article specifies procedures and arrangements related to portfolio compression for the purpose of Article 11(1)(b) of Regulation (EU) No

X/2012 [EMIR]. 2. Financial counterparties and non-financial counterparties with 500 or more OTC derivative contracts outstanding which are not centrally cleared shall have procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise. Financial counterparties and non-financial counterparties shall ensure that they are able to provide a reasonable and valid explanation to the relevant competent authority for concluding that a portfolio compression exercise is not appropriate. 3. Financial and non-financial counterparties shall terminate each of the fully offset OTC derivative contracts no later than when the compression exercise is finalised.	X/2012 [EMIR]. 2. Financial counterparties and non-financial-counterparties with 500 or more OTC derivative contracts outstanding which are not centrally cleared shall have procedures to regularly, and at least twice a year, analyse the possibility to conduct a portfolio compression exercise in order to reduce their counterparty credit risk and engage in such a portfolio compression exercise. Financial counterparties ~~**and non-financial**~~ counterparties shall ensure that they are able to provide a reasonable and valid explanation to the relevant competent authority for concluding that a portfolio compression exercise is not appropriate. **For example, in the following cases a portfolio compression exercise is not appropriate: […]** 3. Financial **and non-financial** counterparties shall terminate each of the fully offset OTC derivative contracts no later than when the compression exercise is finalised.

Current version (ESMA)	***Proposed amendments***
Article 1 COL Assets eligible as highly liquid collateral ..... (c) in the case of a commercial bank guarantee, subject to limits agreed with the competent authority it: .... (ii) has been used by issuer that the CCP can demonstrate to the competent authority with a high degree of confidence has low credit risk based on a stable and objective internal or external assessment, taking into consideration the risk arising from the establishment of the issuer in a particular country ..... (ix) the suitability of the guarantor has	Article 1 COL Assets eligible as highly liquid collateral ..... (c) in the case of a commercial bank guarantee, subject to limits ~~**agreed with the competent authority it:**~~ .... (ii) has been used by issuer ~~**that the CCP can demonstrate to the competent authority**~~ with a ~~**high degree of confidence has**~~ **a** low credit risk based on a stable and objective internal or external assessment. ~~**taking into consideration the risk arising from the establishment of the issuer in a particular country**~~ ~~**(ix) the suitability of the guarantor has**~~

been ratified by the Board of the CCP after a full assessment of the issuer and of the legal, contractual and operational framework of the guarantee in order to have a high level of comfort on the effectiveness of the guarantee, and notified to the competent authority; ..... (viii) is fully backed by collateral that satisfies the requirements of subparagraph 3(b) and the CCP can demonstrate can be realised on the same day.	**~~been ratified by the Board of the CCP after a full assessment of the issuer and of the legal, contractual and operational framework of the guarantee in order to have a high level of comfort on the effectiveness of the guarantee, and notified to the competent authority;~~** .... viii) is fully backed by collateral that satisfies the requirements of subparagraph 3(b) **~~and the CCP can demonstrate can be realised on the same day.~~**

Current version (ESMA)	***Proposed amendments***
Article 7 RM Intragroup transaction notification details 1. This Article specifies the exempted intragroup transactions to be included in the application or notification referred to in paragraph 6 to 10 of Article 11 of Regulation (EU) No X/2012 [EMIR]. 2. The application or notification shall be in writing and shall include the following information: a. the legal counterparties to the transactions including their identifiers in accordance with [Article 3 of ITS on trade repositories on Identification of Counterparties and other entities]; b. the corporate relationship between the counterparties; c. details of the supporting contractual relationships between the parties; d. the category of intragroup transaction met by the counterparties as determined by Article 3 paragraphs 1 and 2 of Regulation (EU) N0 xxxx/2012 [EMIR]; e. details of the transactions for which the counterparty is seeking the exemption, including: (i) the general class of OTC derivative contracts; (ii) the type of OTC derivative contracts; (iii) the underlyings; (iv) the notional currencies; (v) the range of contract tenors; (vi) the settlement type;	Article 7 RM Intragroup transaction notification details 1. This Article specifies the exempted intragroup transactions to be included in the application or notification referred to in paragraph 6 to 10 of Article 11 of Regulation (EU) No X/2012 [EMIR]. 2. The application or notification **<u>from financial counterparties</u>** shall be in writing and shall include the following information: a. the legal counterparties to the transactions including their identifiers in accordance with [Article 3 of ITS on trade repositories on Identification of Counterparties and other entities]; b. the corporate relationship between the counterparties; c. details of the supporting contractual relationships between the parties; d. the category of intragroup transaction met by the counterparties as determined by Article 3 paragraphs 1 and 2 of Regulation (EU) N0 xxxx/2012 [EMIR]; e. details of the transactions for which the counterparty is seeking the exemption, including: (i) the general class of OTC derivative contracts; (ii) the type of OTC derivative contracts; (iii) the underlyings; (iv) the notional currencies; (v) the range of contract tenors; (vi) the settlement type;

(vii) the anticipated size, volumes and frequency of OTC derivative contracts per annum; (viii) the total credit limits for engaging in OTC derivative contracts between the parties.	(vii) the anticipated size, volumes and frequency of OTC derivative contracts per annum; (viii) the total credit limits for engaging in OTC derivative contracts between the parties. **<u>3. The application or notification from non-financial counterparties shall be in writing and shall include the following information:</u>** (i) **<u>the general class of OTC derivative contracts;</u>** (ii) **<u>the type of OTC derivative contracts;</u>** (iii) **<u>a general description of the risk management procedures applying to the transactions</u>**
3. As part of its application or notification to the relevant competent authority a counterparty shall also submit supporting information evidencing that the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] are fulfilled including legal opinions or summaries, copies of documented risk management procedures, historical transaction information, copies of the relevant contracts between the parties.	3. As part of its application or notification to the relevant competent authority a counterparty shall also submit supporting information evidencing that the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] are fulfilled including legal opinions or summaries, copies of documented risk management procedures, historical transaction information, copies of the relevant contracts between the parties.
4. A counterparty required to submit a notification of an intention to apply the exemption to the relevant competent authority in accordance with Articles 11(7) or 11(9) of Regulation (EU) N0 xxxx/2012 [EMIR] shall submit that notification within 14 days of utilising the relevant exemption.	4. A counterparty required to submit a notification of an intention to apply the exemption to the relevant competent authority in accordance with Articles 11(7) or 11(9) of Regulation (EU) N0 xxxx/2012 [EMIR] shall submit that notification within **~~14~~ 30** days of utilising the relevant exemption.
5. Where a competent authority determines that further information is required in order to assess the fulfilment of the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR], that relevant competent authority may submit a request for information to the counterparty. Such request shall be in writing.	5. Where a competent authority determines that further information is required in order to assess the fulfilment of the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR], that relevant competent authority may submit a request for information to the counterparty. Such request shall be in writing.
6. A positive decision from a competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be communicated to the counterparty in writing including the	6. A positive decision from a competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be communicated to the counterparty in writing including the

following information: a) whether the exemption is a full exemption or a partial exemption; b) in the case of a partial exemption, a clear identification of the limitations of the exemption; and c) any additional relevant information. 7. A negative decision by the relevant competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR] or an objection by the relevant competent authority under Articles 11(7) or 11(9) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be communicated to the counterparty in writing and shall include: (i) identification of the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] that have not been fulfilled; and (ii) a detailed reasoning of why the competent authority deems those conditions not to be fulfilled.	following information: a) whether the exemption is a full exemption or a partial exemption; b) in the case of a partial exemption, a clear identification of the limitations of the exemption; and c) any additional relevant information. 7. A negative decision by the relevant competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR] or an objection by the relevant competent authority under Articles 11(7) or 11(9) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be communicated to the counterparty in writing and shall include: (i) identification of the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] that have not been fulfilled; and (ii) a detailed reasoning of why the competent authority deems those conditions not to be fulfilled.
8. A decision by a competent authority under Article 11(8) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be communicated to the counterparty in accordance with paragraph 6 of this Article within 2 months of receipt of the application for exemption.	8. A decision by a competent authority under Article 11(8) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be communicated to the counterparty in accordance with paragraph 6 of this Article within **30 days** **~~two months~~** of receipt of the application for exemption.
9. A decision by the competent authority of the financial counterparty under Article 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be communicated to the competent authority of the non-financial counterparty in accordance with paragraph 6 of this Article within 2 months of receipt of the application for exemption.	9. A decision by the competent authority of the financial counterparty under Article 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be communicated to the competent authority of the non-financial counterparty in accordance with paragraph 6 of this Article within **30 days** **~~2 months~~** of receipt of the application for exemption.
10. The competent authority of the non-financial counterparty shall confirm whether it is in agreement with the decision of the competent authority of the financial counterparty within 2 months of receipt of the decision under the paragraph 1.	10. The competent authority of the non-financial counterparty shall confirm whether it is in agreement with the decision of the competent authority of the financial counterparty within **2 months** f receipt of the decision under the paragraph 1.
11. A notification by a competent authority in accordance with Article 11(11) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be submitted to ESMA in writing.	11. A notification by a competent authority in accordance with Article 11(11) of Regulation (EU) N0 xxxx/2012 [EMIR] shall be submitted to ESMA in writing.
12. The competent authority shall submit the notification to ESMA:	12. The competent authority shall submit the notification to ESMA:

(i) With respect to a notification under Articles 11(7) or 11(9) of Regulation (EU) N0 xxxx/2012 [EMIR] within 1 month from receipt of the notification; and (ii) With respect to a decision of the competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR], within 1 month from the decision being submitted to the relevant counterparty. 13. The notification to ESMA shall include the following information: (i) The information listed in paragraph 2 of this Article; (ii) Whether the decision is positive or negative; (iii) In the case of a positive decision: I. A summary of the basis on which the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] are deemed to have been fulfilled; and II. In respect of Articles 11(6), 11(8) or 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR], whether the exemption is a full exemption or a partial exemption. (iv) In the case of a negative decision: I. Identification of the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] that have not been fulfilled; and II. A summary of why the competent authority deems the conditions in Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] have not been fulfilled. 14. Where a negative decision or objection is communicated by a competent authority, a counterparty may submit a further application or notification in the case where there has been a material change in the circumstances that formed the basis of that decision or objection. 15. Counterparties that have submitted a notification or received a positive decision shall immediately notify the relevant competent authority of any change in circumstance that could affect the fulfilment of the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] . The Competent Authority may decide to object to the application of the exemption or to withdraw its decision. The counterparty may submit a renewed notification in accordance with paragraph	(i) With respect to a notification under Articles 11(7) or 11(9) of Regulation (EU) N0 xxxx/2012 [EMIR] within 1 month from receipt of the notification; and (ii) With respect to a decision of the competent authority under Articles 11(6), 11(8) or 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR], within 1 month from the decision being submitted to the relevant counterparty. 13. The notification to ESMA shall include the following information: (i) The information listed in paragraph 2 of this Article; (ii) Whether the decision is positive or negative; (iii) In the case of a positive decision: I. A summary of the basis on which the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] are deemed to have been fulfilled; and II. In respect of Articles 11(6), 11(8) or 11(10) of Regulation (EU) N0 xxxx/2012 [EMIR], whether the exemption is a full exemption or a partial exemption. (iv) In the case of a negative decision: I. Identification of the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] that have not been fulfilled; and II. A summary of why the competent authority deems the conditions in Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] have not been fulfilled. 14. Where a negative decision or objection is communicated by a competent authority, a counterparty may submit a further application or notification in the case where there has been a material change in the circumstances that formed the basis of that decision or objection. 15. Counterparties that have submitted a notification or received a positive decision shall immediately notify the relevant competent authority of any change in circumstance that could affect the fulfilment of the conditions of Article 11 (6) to (10) of Regulation (EU) N0 xxxx/2012 [EMIR] . The Competent Authority may decide to object to the application of the exemption or to withdraw its decision. The counterparty may submit a renewed notification in accordance with paragraph

2 of this Article.	2 of this Article. **<u>All notifications for an exemption under the procedure described above shall be made only to the home competent authorities in cases where the group firms are registered in another Member State or third country.</u>** **<u>Intra-group transactions that have been exempted under the procedure described above do not need to be reported to ESMA pursuant to Article [XX].</u>**