Comments by

Union Asset Management Holding AG

on the

# Consultation on Review of the technical standards on reporting under Article 9 of EMIR

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Volksbanken Raiffeisenbanken
cooperative financial network

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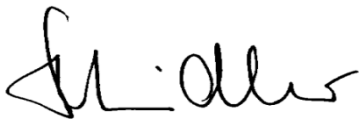
Dear Sirs and Madams,

Union Investment welcomes the opportunity to comment on the “Consultation on Review of the technical standards on reporting under Article 9 of EMIR” of ESMA.

We are one of the leading asset manager in Germany and the asset manager of the German Cooperative Banking Network holding more than EUR 230 billion assets under management for more than 4.1 million retail and institutional clients.

Please find our specific comments to the questions below.

Yours sincerely



Schindler Dr. Zubrod

## I. General remarks

Prior to responding to the questions raised by ESMA, we would like to highlight important issues concerning the UTI which are not covered by ESMA's questions, but should be considered in the Implementing Technical Standards.

1. In practice some counterparties from the sell side fail providing a UTI in time. Besides for determining a party that is responsible for providing a UTI, ESMA should also consider a provision, by which the party who is obliged to communicate to its counterparty a UTI

- should do so as soon as possible but at least within the confirmation process time;
- should provide the UTI in a standardised way (e.g. within the confirmation of the transaction) especially instead of (i) requesting its counterparty to obtain the UTI from a website or (ii) communicating it via separate e-mail) (both, (i) and (ii) cannot be considered by the party receiving the UTI in an automated way).

2. If ESMA abstains from determining the above, it should instead of introducing the proposed Art. 6 of the Draft Implementing Technical Standards define a clear methodology allowing both counterparties of a derivative to create the unique UTI by themselves, without necessity to communicate with the other party. In order to especially maintain UCITS' ability to gain additional income from lending securities, FSB should explain, how "non-bank financing models that do not pose financial stability risks" look like and whether UCITS and other regulated investment funds should be exempted from the scope of additional regulation following FSBs report.

## II. Questions

**Q1: Do you envisage any difficulties with removing the 'other' category from derivative class and type descriptions in Articles 4(3)(a) and 4(3)(b) of ITS 1247/2012? If so, what additional derivative class(es) and type(s) would need to be included? Please elaborate.**

The category "other" might be necessary to allow the reporting of derivatives with more than one underlying (e.g. Interest rate – Currency Swaps, Himalaya options).

**Q2: Do you think the clarifications introduced in this section adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.**

We do not expect any new difficulties.

**Q3: What difficulties do you anticipate with the approaches for the population of the mark to market valuation described in paragraphs 21 or 19 respectively? Please elaborate and specify for each type of contract what would be the most practical and industry consistent way to populate this field in line with either of the approaches set out in paragraphs 21 and 23.**

It causes problems when mapping data, if the values regarding ETD can only be reported as a positive number.

**Q4: Do you think the adaptations illustrated in this section adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.**

It should be sufficient to keep one data field for notional.

Amendments agreed between the counterparties are anyway to be reported under Art. 9 EMIR (even with one data field). As amendments are to be reported by investment firms as separate transactions under MiFIR (cf. ESMA's Consultation Paper MiFID / MiFIR (ESMA/2014/1570), Chapter 8.2, para. 15), NCA's will have all necessary information (all relevant transactions typically involve at least one investment firm). Requiring market participants to consider a field for "historical data" besides a field for current data would mean a breach of the principle of proportionality as it puts a strain on market participants which cannot be justified.

**Q5: Do you think the introduction of new values and fields adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.**

Paragraph 45:

In case of ETD which are ordered by the customer of a Clearing Member, it is necessary that ESMA further clarifies

(i) if the legal relationship between the customer and the Clearing Member is to be reported as a derivative (ETD/OTC?); and

(ii) if yes, which country should be determined by the customer (CCP's country of domicile / Clearing Members country of domicile).

We generally welcome ESMA's proposal regarding the UTI. Please see our remarks in the general comments.

However, further clarification is required related to the new Article 4 (a) para 2 (d) (iii) to the definition of "seller". We believe that the "seller" should be the Sell-Side meaning credit institutions and investment firms (e.g. broker/dealers) according to the definition of financial counterparties in EMIR (Article 2 para 9). UCITS/AIF management companies should be exempted from the definition of the seller.

**Q6: In your view, which of the reportable fields should permit for negative values as per paragraph 40? Please explain.**

All fields should permit a value that can be negative from the perspective of one of the counterparties.

**Q7: Do you anticipate any difficulties with populating the corporate sector of the reporting counterparty field for non-financials as described in paragraph 42? Please elaborate.**

No.

**Q8: Do you envisage any difficulties with the approach described in paragraph 45 for the identification of indices and baskets? Please elaborate and specify what would be the most practical and industry consistent way to identify indices and baskets.**

Paragraph 45 refers to the domicile of the counterparty. We do not see a connection to indices and baskets.

If Paragraph 49 is meant, ESMA should clarify, which would be the country code to be considered if an index or basket considers reference entities domiciled in different countries.

Furthermore we would like to raise the point that the identification of index components might be problematic, as according to a current proposal of the Commission, index providers shall not be obliged to make the index sufficiently transparent to the public.[1] Therefore, ESMA should deem it sufficient to request a flag "B" / "I".

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0641&from=DE.