

KfW Bankengruppe, Postfach 111141, 60046 Frankfurt am Main

ESMA
103 rue de Grenelle
75007 Paris
France

Mark Weber
Our ref.: WbM
Phone: +49 69 7431-3471
Fax: +49 69 7431-2944
E-mail: mark.weber@kfw.de
Date: 02.02.2015

**Response to Consultation Paper ESMA/2014/1352
“Review of the technical standards on reporting under Article 9 of EMIR”**

Dear Sirs,

We would like to thank you very much for granting us the opportunity to submit this letter in response to the above mentioned Consultation Paper (“CP”) issued on November 10, 2014. We would be grateful if the following comments to Question 4 would be taken into due consideration.

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.

Under paragraph 32 in the Adaptations section of the CP it is now clarified that the values of the current field 7 of Table 1 in the Annex to the Commission Delegated Regulation (EU) No 148/2013 will be extended by also allowing the value “C”, where the Reporting Counterparty is a CCP, and “O” where the Reporting Counterparty is an entity referred to in Article 1(5) of EMIR, as neither of the two correspond to the definition of a Financial Counterparty according to Article 2 (8) EMIR nor to the definition of a Non-Financial Counterparty in accordance with Article 2 (9) EMIR.

We fully agree with the suggested adaptations and are convinced that they will help the data quality of reports to be improved.

However, we think that the following consequential adaptations should be adopted in order to fully reflect the counterparty classification scheme under EMIR (Financial Counterparty / Non-Financial Counterparty / CCP / Other Counterparty, i.e. an entity referred to in point 5 of Article 1 of EMIR) and avoid any ambiguity for Reporting Counterparties:

**1) Annex IV of the CP (Draft regulatory technical standards on trade repositories):
amended Annex to Commission Delegated Regulation (EU) No 148/2013, Table 1**

a) Field 15 (“Directly linked to commercial activity or treasury financing”)

The purpose of the field is to state whether “the contract is objectively measurable as directly linked to the reporting counterparty's commercial or treasury financing activity as referred to in Art. 10(3) of Regulation (EU) No 648/2012”; it shall be left blank in the case where the reporting counterparty is a financial counterparty. This information is of relevance only in case of the Reporting Counterparty being a Non-Financial Counterparty in accordance with Art. 10(3) of EMIR. Consequently, this field should also be left blank in such cases in which the Reporting Counterparty is a CCP or an entity referred to in Article 1(5) of EMIR.

The explanation for this field should from our point of view therefore read as follows:

“This field shall be ~~left blank~~ filled in the case where the reporting counterparty is a non-financial counterparty, as referred to in Article 2 (89) Regulation (EU) No 648/2012.”

b) Field 16 (“Clearing threshold”)

The purpose of this field is to give information whether the reporting counterparty is above the clearing threshold referred to in Art. 10(3) of Regulation (EU) No 648/2012. This field shall be left blank in case the reporting counterparty is a financial counterparty.

Again, this field is relevant in case of the Reporting Counterparty being a Non-Financial Counterparty only. We thus suggest to amend the explanatory text in field 16 as follows, since the clearing threshold does not apply to Financial Counterparties, CCPs nor to counterparties which are entities referred to in Article 1(5) of EMIR:

“This field shall be ~~left blank~~ filled in case the reporting counterparty is a non-financial counterparty, as referred to in Art. 2 (89) Regulation (EU) No 648/2012.”

**2) Annex V of the CP (Draft implementing technical standards on trade repositories):
amended Annex to Commission Implementing Regulation (EU) No 1247/2012, Table 1**

Field 7 shall be filled in case of Financial and Non-Financial Counterparties and it shall be left blank in the case of CCPs. No instruction is being given whether this field may be left blank if entities referred to in Article 1(5) of EMIR (which are neither Financial nor Non-Financial Counterparties) are acting as Reporting Counterparties. From our understanding, the field should in these cases also be left blank, because a) neither the taxonomy for Financial Counterparties nor the taxonomy for Non-Financial Counterparties fit to these entities and b) these entities are sufficiently defined in point 5 of Art. 1 of EMIR.

We would therefore suggest to include an additional instruction as follows:

“Blank in the case of CCPs and if the reporting counterparty is an entity referred to in Article 1(5) of EMIR”.

3) Annex V of the CP (Draft implementing technical standards on trade repositories): amended Commission Implementing Regulation (EU) No 1247/2012, Article 4a(2) (new)

Under paragraph 55 in the Introductions section of the CP it is proposed to clarify which reporting entity is responsible for the creation and transmission of the Unique Trade Identifier in the absence of an agreement between counterparties.

When looking at the new Article 4a (Unique Trade Identifier) it seems as though the described mechanism does not take into account counterparties which are entities referred to in Article 1(5) of EMIR, but once again only refers to Financial Counterparties and Non-Financial Counterparties.

We would therefore suggest to insert additional wording as follows:

"(d) for other trades, the following hierarchy shall be followed:

(i) financial counterparty generating the unique trade identifier for their non-financial counterparty and for their counterparty which is an entity referred to in Article 1(5) of EMIR;"

Sincerely,

KfW



Name: Andreas Müller
Title: Senior Vice President



Name: Dr. Frank Czichowski
Title: Senior Vice President and
Treasurer