ESMA Consultation Paper – Review of the technical standards on reporting under Article 9 of EMIR

ESMA/2014/1352 dated 10 November 2014

This response to the above ESMA consultation paper focuses on the subject of Instrument Identifier codes. Particular areas of concern relate to data fields as defined in Annex IV, Table 2 (Common Data) and in Annex V, Table 2 (Common Data). The specific areas of these Annexes are shown in Appendix II to this response.

The draft Implementation Technical Standards that ESMA has proposed include a list of reportable fields prescribing formats and standards for the content of those fields. This consultation paper includes clarification of those data fields and/or their descriptions as well as the introduction of new fields and values. ESMA has said that “The given timeframe of three months for drafting Technical Standards did not allow for extensive and thorough investigations and research into the new area of reporting. In comparison with other legislation, e.g. the Dodd Frank Act, EMIR introduced new data elements in areas where ESMA could not build on lessons learnt. As a result, the practical implementation of EMIR reporting and the experience gained so far has shown several shortcomings and limitations that need to be addressed so that the EMIR reports can better fulfil their objectives”.

While the work of ESMA has continued, industry participants internationally have also been working in parallel to develop appropriate industry standards that are non-proprietary, open and free to enable unique and persistent instrument identification by trading venue across all asset classes globally. This has resulted in the adoption in 2014 of the Object Management Group (OMG) Financial Instrument Global Identifier (FIGI) standard. This has already been used to allocate FIGI-standard identifiers to over 200 million instruments – far beyond the range of any other standard for instrument identifiers. Further information about this initiative, its results and why it is of benefit in relation to EMIR is provided in Appendix I to this response.

We believe that it would be to the disadvantage of investment firms, market infrastructures and regulators internationally if ESMA excludes the use of FIGI-standard instrument identifier codes from the Technical Standards of EMIR. We therefore request ESMA to allow the use of FIGI-standard instrument identifier codes for all aspects of reporting under EMIR. We believe that this should also be particularly relevant to and applicable for MiFID II/MiFIR.

In direct response to the questions posed by ESMA in this consultation paper, we wish to submit the following:

**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.**

Point 35. Elements raised in this section highlight challenges that ESMA is already facing in using the Alternative Instrument Identifier (AII) approach as opposed to using an adopted international industry standard. The AII approach is not an industry standard and is not used outside of the EU. The AII is not a “code”, in the sense of being an identifier that contains no information about the object that it identifies (as per the Legal Entity Identifier global standard). Instead the AII approach is a concatenation of data fields that describe the instrument in question. We propose that ESMA should allow the use of an existing non-proprietary, open and free global industry standard that enables the unique and persistent identification of all financial instruments by trading venue across all asset classes – the Financial Instrument Global Identifier (FIGI) Standard as adopted by the Object Management Group (OMG). This is a 12-character identifier that uniquely identifies a financial instrument by trading venue and includes a check digit for verification of the identifier. Further relevant information is provided below in this response.

**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.**

Point 47. ESMA has said that there is a huge number of derivatives for which there is neither an ISIN nor an AII. The OMG FIGI standard applies to all asset classes including derivatives. While some 20+ million ISINs have been allocated to date, over 240 million instruments by trading venue have already been allocated FIGIs, and this number is increasing by around 5 million instruments per month. This existing allocation demonstrates that the FIGI standard is a most appropriate one for ESMA to allow for regulatory compliance purposes, and is additionally relevant as a unique and persistent identifier for instruments for which no ISIN or AII has been allocated.

Point 48. We strongly support ESMA’s proposal that the product identifier code that allows for the unique identification of a given product should be clearly distinct from a product classifier. As with principles applied to the global Legal Entity Identifier standard, the unique identifier of an instrument should not contain any information about that instrument that it identifies. The characteristics of a product should not be included in the identifier code for that product.

**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.**

Point 49. ESMA has taken the approach that the only acceptable standard that can be used for instrument identifier codes is the ISO 6166 ISIN standard. Though we strongly and actively support the development and use of industry standards, including ISO standards, only a fraction of the instruments that need to be identified by financial institutions, market infrastructures and regulators have been allocated ISINs. In parallel, the OMG FIGI standard has been used to allow the unique identification of more than 200 million instruments already, including indices, index-based derivatives and derivatives across asset classes. ESMA has said that “For baskets composed, among others, of financial instruments traded on a trading venue, it is proposed to identify each such individual financial instrument with a view to align this reporting requirement with the upcoming MiFIR transaction reporting requirements”. The OMG FIGI standard has been created for exactly such applications as this. Allowing market participants to use a non-proprietary, open and free that is already used by industry participants in other aspects of their business operations would be of greatest benefit to the industry and to regulators.

Provided by:

Constantin Cotzias
Bloomberg LP

**APPENDIX I**

**Non-proprietary, open and free industry standards and the use of ISINs/AIIs/UPIs and MICs to identify products, underlyings and trading venues in the EU.**

This document is written in response to the ESMA Consultation Paper “Review of the technical standards on reporting under Article 9 of EMIR” (ESMA/2014/1352 dated 10 November 2014). The intention of this document is to make the European Securities and Markets Authority (ESMA) aware of the Financial Instrument Global Identifier (FIGI) standard for uniquely and persistently identifying financial instruments across all asset classes globally, and of its particular relevance at this time for regulatory reporting by investment firms across the EU in compliance with the European Markets Infrastructure Regulation (EMIR).

In the years between the initiation of the EU Financial Services Action Plan (FSAP) in 1999 and the publication in 2004 of the EU Markets in Financial Instruments Directive (MiFID), market participants internationally recognised that the effective cross-border provision of investment services should result in competition between trading venues. This in turn could result in the same financial instrument being traded on more than one trading venue including off-exchange (OTC). Market participants recognised that, for a variety of important reasons, investment firms would need to be able to identify uniquely a single financial instrument of any asset class according to whichever trading venue on which it was traded.

At that time the ISO 6166 standard for International Securities Identification Numbering (ISIN) already existed. The ISIN data format concatenated an ISO country code with a domestic securities identifier code and a check digit. However, it did not include any element for identifying a trading venue. This was recognised by market participants at that time to be an important limitation of the ISIN code: although the issued security at the ISIN level might be a fungible instrument (as per the ISO rules for ISIN assignment), offerings across multiple locations are typically not immediately fungible, introducing real issues of risk and valuation. The only way to identify a trading venue in association with a traded instrument would be to use an additional data element. The ISO 10383-standard Market Identifier Code (MIC) is an example of such a data element. However, whereas the ISIN code has an inbuilt check-digit to ensure the integrity of the code as a whole, the MIC code does not include a check-digit to ensure its integrity, and there is no ISO standard to provide for a check-digit that spans the ISIN and the MIC code together to ensure the integrity of the two combined fields. This approach therefore leaves significant room for potential errors whose negative effects would flow through not only the individual investment firm but also through to counterparties, market infrastructures, clients and other organisations, including market regulators.

Prior to the implementation of MiFID, market participants also recognised that the structure and format of the ISIN standard would not be capable of uniquely and persistently identifying all financial instruments across all asset classes – in particular, all derivatives – due to the much larger volume of instruments involved. One result of this limitation of the ISIN standard was the development of the “Alternative Instrument Identifier” (AII) approach. The AII is not an “identifier code”, but instead is a collection of multiple pieces of information (referred to by ESMA as “identifiers”) that describe characteristics of the instrument in question. The nature of the AII approach contradicts the approach to identifier codes that has generally been taken by the financial services sector. As a comparison, when developing the global Legal Entity Identifier (LEI) standard (ISO 17442) market participants argued strongly that the LEI should contain no embedded intelligence about the legal entity that it identified. An AII approach is the exact opposite of the LEI approach: it contains only embedded intelligence about the instrument that it identifies. In addition, the AII approach has not been adopted as a standard by any international standards body.

All market participants and market regulators are fully aware that data volumes have grown and continue to grow across the financial sector, adding to the complexity and cost of business operations and of regulation. At the same time, using technology most efficiently is a key to competitiveness and business success: processing data faster and routing clients’ orders faster to trading venues is business-critical. The AII approach is an intrinsically inefficient use of data in that it uses much more data than is necessary to identify a financial instrument uniquely. In practice, as AIIs are used for no purpose other than regulatory reporting, they add an additional and unnecessary element to the compliance burden and the operating costs of investment firms across the EU.

Using an AII approach might have been deemed as the only option available to regulators in the absence of anything more appropriate. However, market participants have recognised the negative impact that such an approach would have, for investment firms and regulators alike, both in the short term and for the much longer term, and have therefore been cooperating in the meantime on the development of a non-proprietary, open and free standard for uniquely and persistently identifying all financial instruments across all asset classes globally.

This cooperation has been led by the Object Management Group (OMG) supported by the Enterprise Data Management Council (EDM Council) and by Bloomberg LP. The Object Management Group® (OMG®) is an international, open membership, not-for-profit **technology standards** consortium, founded in 1989. OMG standards are driven by end-users, vendors, government agencies and academic institutions. The EDM Council is a non-profit trade association founded by the financial industry to elevate the practice of data management as a business and operational priority. The EDM Council is a leading advocate for the development and implementation of data content standards and the publication of data management best practices. The result of this cooperative industry process has been the adoption by the OMG of the “Financial Instrument Global Identifier” (FIGI) standard in October 2014 (<http://www.omg.org/spec/FIGI>).

The FIGI standard itself is non-proprietary, open and free, and all instrument identifiers that apply the FIGI standard are also non-proprietary, open and free. This is a significant difference to the situation with regard to ISINs, many of which today are fee-liable. The EU competition authorities have recently had to deal with situations where they consider the provision of fee-liable ISINs to be an abuse of a strong market position by the publishers of such fee-liable ISINs. Industry associations representing investment firms in several EU member-states continue to complain to the EU competition authorities about these situations related to fee-liable ISINs.

The development of the FIGI standard has included close examination of the current business and data management practices and requirements of investment firms internationally, including in the EU. By allowing investment firms and service providers across the financial sector to use and re-use data freely that is already part of their normal processes, the FIGI standard has immediately achieved success in the most critical measure of any standard: adoption. Today FIGI-standard instrument identifiers (FIGIs) are used to identify uniquely and persistently over 200 million financial instruments by trading venue. The number of new FIGIs allocated is currently increasing on average by over 500,000 instruments per month. The FIGI standard allows for the creation of over 850 billion unique and persistent FIGIs.

FIGIs uniquely identify a single financial instrument and a venue on which it trades, ie there is a separate FIGI per instrument per trading venue. In the same way as the LEI, a FIGI contains no imbedded intelligence about the instrument that it identifies or about the trading venue in question. The FIGI includes a check-digit to ensure the integrity of the identifier as a whole, ie both the instrument and the venue on which it trades. An individual FIGI is also persistent, in that it is never re-allocated to any other financial instrument and it continues to exist even when the instrument that it identifies has expired, matured or ceased to exist itself.

Bloomberg, one of the world’s largest providers of financial information, has been the first organisation to adopt the OMG FIGI standard. All instrument identifiers used by and created by Bloomberg, both to-date and in the future, comply with the FIGI standard. This also means that all of these instrument identifiers are non-proprietary, open and free with no material impediment to their use, re-use or distribution. All FIGIs are freely accessible and downloadable from a publicly-open Internet web site. The fact that all instrument identifiers used by Bloomberg across all asset classes globally now comply with the OMG FIGI standard means that over 300,000 users of financial information around the world are already making use of the FIGI standard. A significant proportion of these data users are in investment firms across the EU. Bloomberg is also working in cooperation with multiple data providers, against which it otherwise competes in other commercial areas, to support those data providers in their own adoption of the FIGI standard and the recording of FIGIs for financial instruments about which they deliver data to their customers.

As ESMA is fully aware, the Markets in Financial Instruments Directive (MiFID) and Markets in Financial Instruments Regulation (MiFIR) also include obligations for trade reporting, transaction reporting and for a European Consolidated Tape solution, all of which also require unique and persistent instrument identification across multiple asset classes and trading venues. To date ESMA has only spoken of the use of the ISO 6166 standard for securities identifiers, has recognised that this standard is not widely adopted in asset classes beyond equities and fixed income, and has proposed that the AII approach, which is not an industry standard, should be used for other asset classes and for instruments where ISINs have not been allocated. With the existence of the OMG FIGI standard for all instruments across all asset classes and all trading venues, allowing the use of this non-proprietary, open and free international standard for reporting in compliance with EMIR as well as with MiFID II/MiFIR should benefit regulators and investment firms alike due to the operational efficiencies that widely-used standards bring with them.

We therefore request ESMA to allow the use of the OMG FIGI standard and of FIGIs by investment firms, market infrastructures including trade repositories and by market participants in their trade reporting and transaction reporting to regulators and in the publication of trade information. This is directly relevant to ESMA-proposed Technical Standards for EMIR, for MiFID II/MiFIR and for future directives and regulations that impact any aspect of EU Financial Markets.

**APPENDIX II**

**Data definitions of relevance to Instrument Identifier codes in ESMA’s consultation paper**

**Annex IV – Draft regulatory standards on trade repositories**

**Table 2 - Common Data**

Section 2b – Product identification

Field 5 – Product Identification Type Current text: “The type of relevant product identification”.

Field 6 - Product Identification Current text: “The product shall be identified through ISIN or AII. AII shall be used if a product is traded on a trading venue classified as AII in the MiFID Data Base published on ESMA web site”.

Field 7 – Underlying Identification Type Current text: “The type of relevant underlying identifier”.

Field 8 – Underlying identifier Current text: “The underlying shall be identified by using a unique identification for this underlying based on its type. In case of baskets composed, among others, of financial instruments traded on a trading venue, only financial instruments traded on a trading venue shall be specified.”

Section 2b – Details on the transaction

Field 14 – Venue of execution Current text: “The venue of execution shall be identified by a unique code for this venue. In case of a contract concluded OTC, it has to be identified whether the respective instrument is admitted to trading but traded OTC or not admitted to trading and traded OTC.”

**Annex V – Draft implementing technical standards on trade repositories**

**Table 2 – Common Data**

Section 2b – Product identification

Field 5 – Product identification type Current text: “Specify the applicable identification:

 I = ISIN

 A = AII”

Field 6 – Product identification Current text: “For product identifier type I: ISO 6166 ISIN 12 character alphanumerical code. For product identifier type A: the 4 character MIC Code of the trading venue assigning the AII concatenated with up to 12 characters product code defined by the trading venue. The other AII components are not to be included. No special characters shall be added between the MIC code and the product code.”

Field 7 – Underlying identification type Current text: “ I = ISIN

A = AII

L = LEI

S = Sovereign

U = UPI

B = Basket

X = Index”

Field 8 – Underlying identification Current text: “For underlying identification type I: ISO 6166 ISIN 12 character alphanumerical code

For underlying identification type A: complete AII

For underlying identification type L: ISO 17442 Legal Entity Identifier 20 alphanumerical character code

For underlying identification type S: ISO 3166 2 character country code

For underlying identification type U: UPI

For underlying identification type B: all individual components identification through ISO 6166 ISIN or complete AII

For underlying identification type X: ISO 6166 ISIN if available, otherwise full name of the index as assigned by the index provider.”