association of the
luxembourg fund industry

ALFI's response to the ESMA Consultation Paper
Review of the technical standards on reporting under Article 9 of EMIR

The Association of the Luxemburg Fund Industry ('ALFI') is the representative body of the 3,094.987 billion Euro Luxembourg fund industry. It counts among its members not only investment funds but also a large variety of service providers of the financial sector. There are 3,905 undertakings for collective investment in Luxembourg, of which 2,538 are multiple compartment structures containing 12,482 compartments. With the 1,367 single-compartment UCIs, there are a total of 13,849 active compartments or sub-funds based in Luxembourg. 67 % of UCITS that are engaged in cross-border business are domiciled in Luxembourg. As one of the main gateways to the European Union and global markets, Luxembourg is the largest cross-border fund centre in the European Union and, indeed, in the world.

Summary of 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.

We are in favor to include the category "other" as it might be necessary to allow the reporting of derivatives with more than one underlying. This could be the case for instance with regard to interest rate – currency swaps, Himalaya options etc.

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.

Yes.

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.

We do not anticipate any particular difficulties with the approaches for the population of the market to market valuation described in paragraphs 21 or 19 respectively. Nevertheless, it might cause technical problems regarding the mapping of data for some market participants, if the values regarding ETD can only be reported as a positive number.

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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.

Yes, in general we believe that this approach will help improve the data quality of reports.

However, 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.

Additionally, ALFI might be concerned about the timing for the transformation of the key Q & As into technical standards. We believe that a transitional period of at least 6 months should be granted for the entry into force of the technical standards.

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.

Yes, we think the introduction of new values and fields adequately reflect the derivatives market and will help improve the data quality reports.

With regard to para. 45 we see the necessity for further clarification in case of ETD which are ordered by the customer of a clearing member

(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).

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.

As already mentioned in our answer to Q3 negative numbers should be allowed in all cases where there could be a negative number from the perspective of one of the counterparties.

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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 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”.

Q9:
Do you think the introduction of the dedicated section on Credit Derivatives will allow to adequately reflect details of the relevant contracts? Please elaborate.

Yes we do.

Q10:
The current approach to reporting means that strategies such as straddles cannot usually be reported on a single report but instead have to be decomposed and reported as multiple derivative contracts. This is believed to cause difficulties reconciling the reports with firms’ internal systems and also difficulties in reporting valuations where the market price may reflect the strategy rather than the individual components. Would it be valuable to allow for strategies to be reported directly as single reports? If so, how should this be achieved? For example, would additional values in the Option Type field (Current Table 2 Field 55) achieve this or would other changes also be needed? What sorts of strategies could and should be identified in this sort of way?

We concur that reconciliation is more than difficult. A structured product is composed of the single components, but there may be other elements that drive the price such as embedded structuring fees of the seller. We believe that compound products such as those strategies should be reported as a single

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

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position. We would suggest to use a general field such as the Option Type field to collect such information. In that field the name of the strategy should be provided. ESMA may revise the reporting tables based on the information submitted to them at a later stage.

Q11:
Do you think that clarifying notional in the following way would add clarity and would be sufficient to report the main types of derivatives:

60. In the case of swaps, futures and forwards traded in monetary units, original notional shall be defined as the reference amount from which contractual payments are determined in derivatives markets;

61. In the case of options, contracts for difference and commodity derivatives designated in units such as barrels or tons, original notional shall be defined as the resulting amount of the derivative's underlying assets at the applicable price at the date of conclusion of the contract;

62. In the case of contracts where the notional is calculated using the price of the underlying asset and the price will only be available at the time of settlement, the original notional shall be defined by using the end of day settlement price of the underlying asset at the date of conclusion of the contract;

63. In the case of contracts where the notional, due to the characteristics of the contract, varies over time, the original notional shall be the one valid on the date of conclusion of the contract.

Please elaborate.

We agree on statement 63.

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