BME RESPONSE TO ESMA CP ON DRAFT TECHNICAL STANDARDS FOR THE REGULATION ON OTC DERIVATIVES, CCPS AND TRADE REPOSITORIES (25 JUNE – ESMA/2012/379)

August 3rd, 2012

Introduction

Bolsas y Mercados Españoles (BME) integrates the companies that operate and manage the securities markets and financial systems in Spain. It brings together, under a single activity, decision-making and coordination unit, the Spanish equity, fixed-income and derivatives markets and their clearing and settlement systems.

BME welcomes the European Securities and Markets Authority Consultation Paper on Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories (EMIR) and ESMA's willingness to provide, efficiently and timely, a final version of the second level regulation of EMIR, and is aware of the great effort ESMA is carrying out to accomplish its command of being ready for the G-20 deadline before end of 2012.

OTC Derivatives and CCPs - General Comments

Kindly note that the comments hereunder to the draft technical standards for the Regulation on OTC derivatives, CCPs and Trade Repositories ('EMIR') need to be understood in the broader framework encompassing EMIR itself and the proposed standards, as a whole regulatory package.

As we already expressed in our comments to the ESMA Discussion Paper[1], one of our main worries on the proposed new piece of legislation refers to the fact that its primary addressee, and therefore mainly affected by it, is the clearing of exchange traded instruments, regardless the fact that no material flaws have been evidenced regarding the European CCPs operations. While we support the aim of increasing the safety and transparency of OTC derivatives markets, we note that the proposed regulation focused much more on providing for rules on already well-functioning infrastructures such as CCPs, for which no market failures had been identified. Such an approach would lead to increasing not only the complexity but also, importantly, the cost of setting and using those arrangements.

With regard to the goal of getting as much OTC derivatives as possible cleared through CCPs, it is of the essence having proper international coordination among different jurisdictions as well as among the relevant competent authorities. We deem such coordination to be a real need and therefore believe that a lack of it would have severe negative consequences.

[1] ESMA Discussion Paper on Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories (ESMA/2012/95). Issued on February 16, 2012.

Differences or even divergence between the regimes to be adopted in different relevant jurisdictions will lead to a scenario of unintended competitive disadvantages, notwithstanding their ultimate purpose for unilaterally raising the overall safety in the system. In this sense, the excessively detailed regime proposed in the European regulatory framework makes it very difficult to live with other jurisdictions' rules, regardless they are compatible with principles of general rules as those of CPSS-IOSCO for Financial Market Infrastructures or those of the Basel Committee on Banking Supervision.

OTC DERIVATIVES - Clearing obligation

Indirect Clearing Arrangements

The outstanding complexity of the proposed scheme is not justified and as such has not been justified so far. In our view, where a client of a clearing member's client wants to hold a segregated account in the CCP, it would be pretty much simpler that such client becomes itself a client of the clearing member.

On the other hand, the fact that the clients will be allowed to offer 'clearing services to one or more of its clients' would make the member's clients to become pseudo-clearing members, although they may be duly authorized. From our perspective, there is no advantage on such approach.

Article 3 ICA (1) of the Draft Regulatory Technical Standards ('DRTS') on OTC Derivatives may be interpreted as an obligation of the CCPs to keep separate accounts for each of the indirect clients. However, in the light of paragraphs 22 and 23 of the Introduction of the Consultation Paper, such interpretation does not seem to be aligned with ESMA's intention.

Abstracts of both paragraphs read as follows: *'that structure should be replicated for indirect clients one step lower, i.e. at the level of the clearing member instead of at the level of the CCP'*, and *'an indirect client should have the possibility of requesting an individual client account with the clearing member, but not necessarily with the CCP'*.

Therefore, it would be appropriate to modify accordingly last sentence of said Article 3 ICA (1) in order to clarify that a client can hold, through a clearing member, both an account in the CCP for proprietary positions as well as another account in the CCP for its indirect clients' positions.

Article 3 ICA (2) of the DRTS on OTC Derivatives sets forth that the CCP shall not have a contractual relation with the indirect clients, i.e., with the clients' clients. However, it sets forth that the CCP should identify and manage the risk coming from the indirect clearing arrangements. Considering (i) the responsibility of both the clearing members and the clients holding separate accounts in the CCP, and (ii) the risk management of them by the CCP, we suggest the deletion of the said Article 3 ICA (2).

Clearing Obligation Procedure

The top-down approach is not market-driven and has very little chance of being viable. In our view, there must be important incentives for a CCP to step-in and develop a clearing solution following a top-down decision since no CPP can be forced to clear contracts.

The criteria presented in Article 1 CRI of the DRTS on OTC Derivatives are sufficient. Regarding the availability of pricing information, that is precisely one of the shortcomings that CCP-clearing tries to solve.

Notwithstanding the above, the risk for the clearing obligation – no matter how well defined it is – being lawfully dribbled by means of creating products that out of the scope of the clearing obligation exceeds the risk that no CCP would eventually provide the clearing service.

For this reason, we deem it necessary to remark that there should be adequate incentives and disincentives for fostering and, ultimately, increasing CCP clearing. It is our view that the foreseen obligation, taking it in isolation, will achieve far less its purpose than it could do in conjunction with other measures, mainly capital requirements and risk management of bilateral positions.

Public Register

We support the approach taken to define, in the public register, the classes of derivatives subject to the clearing obligation, as long as the details included in letters (f) through (l) in Article 1 PR of the DRTS on OTC Derivatives are only useful to be exhaustive but not to avoid the clearing obligation when one of the characteristics of the contract does not perfectly match that included in the public register. Otherwise, it would be better to eliminate all those items, as letters (a) through (e) of said Article 1 PR are enough to define a class of derivatives.

Access to a trading venue – Liquidity fragmentation

We think that in the RTS ESMA goes beyond the mandate in article 8.5 of EMIR. While ESMA is asked to "develop draft regulatory technical standards specifying the notion of liquidity fragmentation", what it really does is assessing the potential negative effects of this fragmentation and even proposing an eventual solution , something out of the scope of the mandate.

The right of the CCPs to access a trading venue, which is covered under Article 8 of EMIR, is conditional upon such access does neither require interoperability nor it involves a detrimental effect into the normal functioning of said trading venue as a result of the liquidity fragmentation it entails.

The proposal for technical standards presents a definition for liquidity fragmentation with which we disagree considering that the content of any derivative instrument is inextricably linked to its counterparty. In this sense, it needs to be clear that a given position vis-à-vis a CCP differs from that very same position vis-à-vis another CCP and, therefore, derivatives on different CCPs cannot be mixed-up at the trading layer.

The presented proposal aimed at solving the relevant issue of liquidity fragmentation by means of interoperability arrangements between CCPs conflicts with the provisions in EMIR.

CCP REQUIREMENTS

General - Definitions (article 2 (18))

We understand that the definition presented for 'wrong way risk' does not duly describe that concept's nature as long as the proposed definition only refers to the risk of exposure to a counterparty, which is straightly correlated to that counterparty's credit quality. In our view, this approach constitutes a sort of tautology as long as any counterparty's credit quality is the main exposure factor to that counterparty and it cannot be non-correlated of positively correlated to the risk exposure to that said counterparty.

Considering the above, we suggest the following wording for the definition of wrong way risk: *the risk coming from the exposure to a given counterparty where the collateral provided by such counterparty is highly correlated to the counterparty's credit risk.*

These risks more often cited usually entail (i) correlation between a given institution and the debt issued by itself of by an institution in the former's same group of companies, or (ii) correlation between a given institution and its country's sovereign debt risk. As an example, it could be the case that the use of UK sovereign debt as collateral by a UK institution to collateralize its commitments, would result in that entity's solvency being eroded in case of an eventual default by the Treasury, or vice-verse where the said institution is relevant enough; in this example, the CCP would face risks vis-à-vis a solvency-damaged-institution which would be collateralized by sovereign debt with even lower value.

College

We do not think that the college structure is an efficient model. Hence, we consider that the aspect left to be developed by the Technical Standards is not so relevant and, consequently, what can be suggested at this point is that the requisite sets forth in Article 18 (2)(h) of EMIR does not unnecessarily increase the number of participants in the college. Therefore, the proposal of three currencies with the highest relative share, provided their share exceeds 10 percent, seems right.

The organization of the college seems right but it is very likely that obligations like those listed in Article 6 CG of the DRTS on CCP requirements will increase the burden on the relevant CCP to feed such information to the competent authority.

Recognisition of third country CCPs

We consider it is a remarkable notable mistake that the proposed third country regime does not pursue reciprocity arrangements. By contrast it is only required the third country CCP to have been authorized under the law of the relevant third country, to have passed an assessment equivalent to that proposed by the European Commission and that a cooperation agreement between the relevant supervisor and ESMA has been established. In our view, these three requirements are not sufficient to ensure due equivalence.

Organisational requirements

As a general remark, we believe that the organizational requirements set forth are outstandingly oversized, especially with regard to small and medium sized CCPs, and that the regime proposed is a key driver for a costs increase, due to being excessively detailed and rigid.

- ***GOVERNANCE ARRANGEMENTS***

We think that provisions regarding CCPs as part of a wider corporate group as proposed in Article 1 ORG (5) of the DRTS on CCP requirements are appropriate. However, last part of this article, which mandates that a CCP shall not share human resources with other group entities, seems excessive and it goes far beyond what is set forth in Article 26 of EMIR, which does not contain any provision in this respect.

- ***DISCLOSURE***

It is shocking the deep detail that the Technical Standards require for the information to be disclosed by the CCP regarding a number of issues, while it is neither clear what purposes such kind of disclosure serves nor to what extent may such information be interesting or useful for the general public.

On the other hand, Article 7 ORG of the DRTS on CCP includes some terminology whose interpretation may vary significantly, e.g., 'key objectives and strategies'.

In addition to the above, we think that information concerning business continuity as well as that on the CCP's risk management systems, techniques and performance should be limited based on the ground of security and competition reasons.

Record keeping

We commend the change from the Discussion Paper to reduce the on-line availability in favor of availability upon request for part of the information.

Margins

As a general remark, the excessively detailed and prescriptive approach poses a risk that CCPs will tend to comply with the minimum required regime instead of looking for the best model for risk management.

On the other hand, such an approach introduces a real possibility for 'regulatory arbitrage'.

From our point of view, the mix of 'initial margin' and 'default fund' needed to comply with Articles 41 and 42 of EMIR should be left at the criterion of each CCP, and its relevant Risk Committee, depending on the concrete features of the financial instruments and the risk profile of the clearing members. We base our position on this on the fact that each model shall have to pass every validation required by EMIR.

Precisely, such a detailed prescription raises serious problems concerning excessive simplification. As a matter of example, it could be mentioned the unjustified simplification regarding the number of days for the 'liquidation period', presented in Article 3 MAR of the DRTS on CCP requirements, where the distinction between only two groups of financial instruments does not allow to refine the process in view of the relevant liquidity.

The look back period for volatility calculation, combining the latest six months and the six months reflecting the most stressed market conditions during the last thirty years, leads in practice to initial margin requirements that are close to the stress test level. Such approach

blurs the distinction between different protection levels and makes the results of the daily back test, which is also required by EMIR, to become irrelevant.

Article 4 MAR of the DRTS on CCP requirements refers to a 'negative correlation'. In our view, such 'negativity' is not necessary as long as the relevant criterion is the correlation itself, whereas the sign of the correlation should be combined with that of the positions to be considered for the calculation.

Default Fund

The quarterly review of the hypotheses of scenarios of the stress tests by the Risk Committee is excessively frequent as long as there are not significant changes on the market.

Default Waterfall

We welcome ESMA's initiative to rule out the link between the total amount of resources employed by the CCP and the total amount of margins. However, we find that the idea of linking it (50%) with the capital required under Article 16 (2) of EMIR is neither appropriate as the latter is precisely the capital not-linked to the CCP's clearing activities.

For this reason, we suggest that it is connected to the Default Fund's size, e.g., 10% or the minimum amount required to the CCP's members or the equivalent amount to the one of the member contributing the most. These proposals accounts for all the advantages mentioned in paragraphs 188 and 189 of the Introduction of the Consultation Paper.

Collateral

We agree with ESMA's approach to leave at the criterion of the CCP the decision upon minimum cash requirement to be requested from each counterparty.

It is needed to clarify whether equity would be accepted as highly liquid collateral. Although Article 46 (2) of EMIR considers that equities can be deposited as collateral when they are the underlying to a derivatives contract, we understand it not to be sufficient as long as the issue at stake is establishing the general conditions under which they will be accepted. Shares are financial instruments and therefore are included on Article 1 COL para. 3 (b) of the DRTS on CCP requirements; shares encompassed into the main indexes fulfill all the conditions sets forth in the RTS, with the potential exception of condition (ii), which requires low market risk. In our opinion, despite it may be difficult to objectively specify the threshold of what is considered as 'low market risk', we acknowledge that equities would be above it. However, we believe that the market risk condition should be linked to the haircut, and thus any market risk, which is inherent to every financial instrument, may be adequately neutralized by the haircut. This it is not only applicable to equities, but also to all financial instruments.

Indent (viii) of that very same paragraph 3(b) refers to the wrong way risk concept. In our opinion, the wrong way risk should not affect the eligibility of a financial instrument where this is highly liquid; it would rather only affect the haircut in case the wrong way risk occurs. Provided that considering the wrong way risk when fixing the haircuts is mandatory under Article 3 COL, we suggest deleting the condition (viii).

On the other hand, it is quite questionable that CCPs cannot accept, as a general rule, the collateral accepted by European central banks, with an appropriate haircut in place. In any case, we consider that CCPs must be free to put in place more restrictive rules.

Article 3 COL (3) requires annually independent validation of the haircut policies. Where haircuts have been previously demonstrated to the Competent Authority as prudent (as required by Article 3 (2)), we would defend that validation should not be necessary. However, if it is required, it would be sufficient that such validation be made by the Risk Committee.

Regarding the acceptance of the commercial bank guarantees, Article 1 COL 3 (c) (viii) requires that the guarantee is fully backed by collateral, which in practice means such a strong disincentive that it voids Article 46 (2) of EMIR, which allows the use of bank guarantees by non-financial counterparties. This sort of entities will try to avoid clearing on a CCP where the guarantees fulfill such condition, which is reiterative where there are a number of other conditions and restrictions in order to ensure that guarantees constitute safe collateral and that they do not lead to risk concentration.

Investment policy

We agree with the criteria-based approach adopted.

However, we do not share the regime enshrined in Article 1 INV (2) of the DRTS on CCP requirements. In that sense, we believe that where a financial instrument fulfills the requirements under paragraph 1 of Article 1 INV, the motivation of the CCP to maximize the return is not relevant and it does not affect the main goal as it is the capital protection.

Review of models, stress testing and back testing

With regard to Article 1 SBT (6) of the DRTS on CCP requirements, we assume that the obligation for CCPs to subject its systems and valuation models to validation by an 'independent party' when using estimated prices only applies to the case where there are no prices available at all for a given class of derivatives. Hence, by contrast, it would not applicable to the estimation of prices doable for series of options or maturities less liquid than the main ones for which a price can be deducted using a correlation and arbitrage methods. Such estimation would fall under the scope of Article 1 SBT (5).

Where paragraph 227 of the Consultation Paper – under section IV.XII Review of models, stress testing and back testing – reads that the supervising authority should validate CCP models, it should be understood that if the supervising authority has validated/approved the models previously, there is no need to go through further validation processes. Notwithstanding, the validation by the Risk Committee should be deemed as a qualified and independent valuation, considering the composition of such committee.

Articles 3 SBT (5) and 5 BST (7) of the DRTS on CCP requirements include requirements that are similar for the disclosure of performance and analysis of back testing and stress testing to clearing members and known clients. We believe that such reference to the clients is inappropriate, as long as there is no contractual relation between them and the CCP, but between them and the relevant clearing member. In addition, disclosure to the clearing

members should be subject to the due aggregation of the results of each member or those results not being identifiable and attributable to concrete members.

Concerning Article 13 SBT (11), it seems that undertaking monthly reverse stress tests seems to be excessive, considering their purpose, i.e., identify extreme scenarios. We think that the frequency for these tests should be in keeping with the review of the stress test models.

With regard to Article 15 SBT, while we concur with the public availability required in paragraph (2), we believe that the level of detail of the requirements as well as the target under paragraph (1) should be reduced based on reasons pointed out previously.

Trade repositories - General Comments to RTS and ITS

On a best effort basis, BME has deeply analyzed the proposals issued by ESMA, mainly on the topics affecting CCPs and trade repositories and has divided its answer to this consultation in two main sections: first, general comments over the Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) and second, it has provided its concrete answers to the Impact Assessment questions.

Introduction – point 267 (p. 47): ESMA welcomes the suggestion that "TRs should develop the functionality to identify the composition of baskets".

We think a TR should match the composition of baskets when the trade is reported separately by the counterparties. The correct identification of the basket components should be an obligation to the counterparties.

Introduction – point 285 (p. 49): Daily updated information about the mark-to-market valuation of the outstanding contract should also be required in order to quantify the counterparty's exposure more accurately.

We understand that those counterparties obliged to mark-to-market or mark-to-model under EMIR Art.11 should send those valuations with the same frequency to the trade repository. This task can be particularly difficult for non-financial counterparties that usually receive valuations from their financial providers and do not carry out valuations by themselves.

ANNEX I: Table of fields: Section 2.f. Interest rates. The new table of fields appears to have some format errors. i.e: day count fraction xxxx,yy.

It should be a fraction, not a number of days.

Art.5.1 RTS: "Novation of a derivative contract shall be treated for reporting purposes as a modification of that contract".

We understand that ESMA will be forced to reconcile those amendments sent by a CCP to a TR other than the initial TR to which counterparties reported, unless ESMA set trade repositories to interconnect each other and exchange data for reconciliation purposes. If the solution chosen is the latter, of which BME is very much in favour, we encourage ESMA to provide

some guidance to trade repositories about the process they should undergo to carry out such reconciliation.

ANNEX I: Table of fields: Common Data - Section 2a – contract type

Field "Underlying": The Technical Standards state that the Underlying is applicable to all contracts. However, as per the specified format (being ISIN, LEI, Basket and Index) it seems that this field is only applicable to Equity or Credit Contracts.

Art.7 RTS: Reporting log

After analyzing the technical implications of developing a log such as the one described in the consultation paper (Art. 7 Draft Regulatory Technical Standards on TRs), BME highly recommends ESMA to allow TRs to develop the audit trail of the operations based on the Trade Identifier and the transactions references, but not creating a concrete log to record and duplicate all the information regarding the possible changes. TRs could develop an easier solution not only for TRs to record but for market participants to report.

If participants are obliged to send the "old and new" values of the changing fields or on the other hand, TRs are obliged to search and compare the changing fields, in order to create a table including both values, this requirement will imply a lot of effort for obtaining not much added-value. Additionally, if the change affects several fields, this process will be even more cumbersome.

BME's proposal is creating an instant audit trail by providing all the operations related to a concrete trade, including amendments, when required by supervisors. This solution will offer regulators an efficient tool for supervision, avoiding greater costs and efforts to the industry and market infrastructures. Given this solution, ESMA should only include one additional field in the reporting requirements informing of who made the related changes to a concrete value.

Reporting of strategies (there is no reference to them on this paper)

We understand strategies should be reported on leg-by-leg basis (i.e.: a call spread should be reported by sending the report of the two call trades separately). This means that counterparties should identify every trade with a different Trade ID.

Art. 3.4. RTS

How should counterparties identify delegation in the message sent to the TRs? There is no field in tables 1 or 2 to identify it.

ANNEX I: Common data, section 2f –Interest rates – Field 38: Fixed rate

Number of decimals should be at least 5

ANNEX I: Common data, section 2b – Details of the transaction – Field 5: Trade ID

With regard to the Trade ID format, ESMA says "Up to 20 numerical digits" and notes that this code should be the "internationally agreed UTI". As far as we know from the papers issued by

the industry about the USI, this code will have more than 20 digits (See paper issued by ISDA "Unique swap identifier (USI): An overview document" dated June 7, 2012)

Impact assessment. Policy options

1. What is the appropriate level of details to be reported to TR?

Specific objective: To ensure that the appropriate details of any derivative, including any modification or termination, are reported to a TR in the EMIR defined timeline.

We support the ESMA's idea of gathering within the TRs all the necessary information to enable the different types of regulators to carry out their tasks. Nevertheless, we believe the fact of collecting extra data out of the main characteristics of the contracts should be addressed at a later stage if ESMA wants the industry and TRs to be ready by the proposed deadline.

Especially, we see difficult to automate the collection of some fields such as:

Beneficiaries

Clearing threshold (field 16 counterparty data)

Directly linked to commercial activity or treasury financing (field 15 counterparty data)

Exposure fields when reported by non-financials

The reasons because the automation of the abovementioned fields is considered difficult have been addressed in our responses to the different questions raised in the impact assessment.

1a. What is the best identifier for counterparties, CCPs, beneficiaries and brokers?

Specific objective: To ensure accurate identification of counterparties, CCPs, beneficiaries and brokers.

We believe the best option would be to continue with the current market practice, which is using BIC, VAT and client codes to identify counterparties and participants, until a final global entity identifier is developed.

BME fully supports the usage of the Legal Entity Identifier as global harmonized code, as the principles of CPSS-IOSCO recommend.

In our opinion, using an interim solution would force market participants and trade repositories to adapt their systems twice, first to the interim solution and afterwards to the final one.

1b. What is the best solution to identify traded instruments?

Specific objective: To ensure accurate identification of traded instruments

We support the accommodation by ESMA of the UPI solution provided by the industry as soon as it is defined. In the meantime, ESMA should provide the taxonomy to be used. Therefore, option 2 is our preferred option.

The usage of a different taxonomy than the one supported by the industry can lead regulators to inaccuracies when supervising product exposures, especially, this would be the case when analyzing and gathering data from other jurisdictions.

Likewise, market participants reporting to different jurisdictions will find problems to adapt their back-office systems to the different taxonomies proposed in every jurisdiction.

1c. What is the best option to identify the reported trade? Specific objective: To ensure accurate identification of the reported trade

We think ESMA should analyse the rules for the generation of USIs that the industry has developed, in order to correctly identify any event that will generate a new USI, with the aim to inform the industry which USI they should report to the trade repository in the case several USIs were generated for the same trade, as these rules may change from one jurisdiction to another.

For example, under the CFTC rules, several USIs coming from the same trade are generated and reported to the trade repository after the novation process. ESMA technical standards obliges counterparties to report the novated trades and not the original ones in the case of listed derivatives, while this is not the case for bilateral trades where only the original trade should be reported and enriched with the clearing details. These two processes should be reported differently and using different trade identifiers.

ESMA should determine, independently on how many USIs are generated during the life of the contract, which one should be reported to the TR and used for the audit trail of the trade.

To conclude we encourage ESMA to provide some guidance in the technical requirements ruling the process of the definition of trade identifiers to be sent to the trade repository, as this code will be crucial for TRs in order to reconcile not only the data related to trades sent to different TRs, but even to reconcile trades reported separately to the same trade repository and proceed with amendments of reported trades.

1da) Should fields related to the clearing obligation be reported? Specific objective: To ensure that trade repositories can be used for the purpose of monitoring the compliance with the EMIR clearing obligation.

We support the option 1 of including a reporting field to identify if a contract is subject to the clearing obligation. This will make it easier for regulators to monitor the said obligation (we understand there is a typo and where it is written “Option 1: Include a reporting field to note where a product…” it should be “Option 1: Include a reporting field to note where a contract…”).

Whereas this field’s value can be obtained easily for trades between financial counterparties, the information for this field is not so evident when a non-financial counterparty is involved. Although the clearing obligation should be monitored by non-financial counterparty and therefore known in advance, nevertheless, the process of automating the reporting of this field is going to be complicated in scenarios where non-financials are involved and delegate their reporting obligation, as the non-financial will have to communicate to its counterparty

whether it is obliged to clear or not under Art.4 EMIR in order to mark accordingly the field "Clearing obligation".

1db) Should the activity of non-financials be monitored through trade repository data Specific objective: Ensuring the monitoring of compliance of EMIR obligations by non-financials.

We support the inclusion of the reporting field to identify whether the trade is directly linked to the commercial activity or treasury desk financing. We believe TRs are the best tool for monitoring non-financials' activity and the inclusion of this field will enable supervisors to achieve their task in the most straightforward way.

However, even though non-financial entities will have this information at their disposal, we consider it might be not so easy to automate the generation of this field within their system, as it will be likely manually input by the trader.

1 dc) Should data on the clearing threshold be reported? Specific objective: To ensure that trade repositories can be used for the purpose of monitoring the clearing threshold.

Non-financial counterparties are obliged under Art. 10.1(a) - EMIR to immediately notify ESMA the moment the clearing threshold is exceeded. Although non-financial counterparties are obliged by EMIR to monitor their activity regarding this threshold, they will find difficulties to identify in real time when the clearing threshold is exceeded, so we recommend ESMA to rule the internal monitoring of the clearing threshold on an end of day basis, when entities are able to identify and reconcile their open positions in all their accounts in order to check if they exceed the correspondent threshold for each asset class.

1e. Should information on intra-group transactions be reported? Specific objective: To ensure information is received on compliance with the EMIR mandatory clearing obligation and requirements for non-centrally cleared trades.

We support the identification of intra-group transactions in the trade repositories as it is necessary information for the monitoring of the clearing obligation in non-financial counterparties. As the reporting of intra-group transactions cannot be delegated in a counterparty, most of the non-financial multi-nationals we have talked to are going to report these trades on their own. Bearing in mind that this information will be reported by the company itself, we do not see particular problems in reporting such information.

1f. Should trades with non-EEA counterparties be specifically identified? Specific objective: To ensure trades with non-EEA counterparties can be identified

We support the inclusion of such a new field for the identification of non- EEA counterparties. However, this field should not be filled if the information can be obtained from the LEI.

Therefore, we consider this field should be included in the table while there is not a LEI implemented that identifies the place of origin of counterparties.

1g. How should beneficiaries be identified and reported?

Specific objective: To ensure the beneficiary of a contract be identified and reported.

Option 1 is our preferred option. From a trade repository perspective, the possibility of receiving a long list of beneficiaries will enforce us to over dimension our database just to be able to cover the identification of beneficiaries. Furthermore, we understand it is not efficient to send the same information in every trade the structure comes into.

Taking into account that the beneficiaries' composition of structures like funds are changing on a daily basis, we support the maintenance of a separate database with the daily composition, either maintained by the structure's managers and reported directly to the regulators interested or maintained in the trade repository as a separate database.

An intermediate solution could be the reporting of those beneficiaries that own a significant share of the structure. ESMA could set a threshold that obliges to identify those structure's beneficiaries that own a percentage of the structure above such threshold. This would allow regulators to have the information of the most important stakeholders within the same database, enhancing their supervision's process. We understand that the cost for counterparties to report just some important beneficiaries or reporting the whole list is similar, but reporting the whole list in every trade, besides of being inefficient from a database perspective, does not add too much value.

1h. Should the formal confirmation of a trade be reported?

Specific objective: To collect information in relation to the formal confirmation of a trade.

Definitely, the information about the confirmation is something that should be included in the reporting to the TR. BME supports that ESMA should rule and monitor confirmation times as this is an important source of legal risk. The monitoring of confirmation times and the consequent obligation of reporting a field related to it will push counterparties to fulfill their obligations in this respect.

1i. Should exposures be reported?

Specific objective: To ensure the data fields meaningfully show the exposures of counterparties to other counterparties.

We definitely support the reporting of exposures, but we consider this requirement should be defined at a later stage, as a deeper analysis over the best way of achieving meaningful data should be conducted.

Reporting exposures by counterparties will be technically difficult to set up for counterparties, apart from the fact that many of the collateral amounts posted are not linked to a single trade but covering bilateral netting agreements.

Even in the case that a proper way of reporting exposures was found and counterparties were able to report such information, the monitoring of net exposures could be difficult, especially when a collateral agreement covers products traded in different asset-classes.

2. Should TRs be required to reconcile data?

Specific objective: To ensure the data reported by two counterparties matches each other when reported to different TRs.

We agree with ESMA that the reconciliation should be made amongst TRs, but they should provide rules for that reconciliation. In that sense, we encourage ESMA to require a Trade ID to any trade reported separately. If a trade is allowed to be reported without a Trade ID, it is not possible to reconcile data when the trade is reported separately by the counterparties (even when both counterparties are reporting to the same TR). We understand that trades between end users cannot be labeled by the counterparties with a UTI, so the Trade Repository could assign one to those trades where none of the counterparties could provide one. The trades reported without a UTI should be reported in one single sequence as the reconciliation of separate reporting is not possible. For those scenarios where the reporting obligation is delegated and the information of both counterparties is reported in the same sequence, the TR could provide a UTI to the counterparties as it will be needed for future amendments or information updates such as the daily valuation.

Additionally, a trade reported bilaterally without a Trade ID, will be impossible to be amended by the CCP if the trade is taken to a CCP afterwards, so we encourage ESMA to oblige counterparties to provide the CCP with the UTI for every cleared trade.

3. What is the most appropriate date for the entry into force of the reporting obligation?

Specific objective: To ensure the start of the reporting obligation is appropriate and proportionate to ensure adequate implementation for both market participants and ESMA.

The proposed solution will push TRs, being under the pressure of competition, to be ready at the earliest date available for all asset classes, obliging market participants to start reporting all asset classes since the 1st July.

This will not allow the phase in approach supported in a first instance, and may be too challenging for market participants.

On the other hand, market participants will not be able to define their own roadmaps until TRs decide their delivery deadlines for each asset class. This will impede market participants to define an efficient assignation of resources for adaptation.

We believe the industry would appreciate a clearer phase-in approach that could drive them to concentrate their efforts and resources by asset class with concrete deadlines.

Therefore, our preferred solution would be Option 2, defining fixed dates, but with a phase in approach per asset class.

4. Should the date of application of the reporting obligation be the same for all counterparties?

Specific objective: To ensure the start of the reporting obligation is appropriate and proportionate to ensure adequate implementation for market participants.

Setting a calendar with reporting start dates regarding the different types of counterparties would add more complexity. Trades will be sent to the TR but part of them will not be reconciled or will be incomplete, as their counterparties information will be missing. Those reports will have to be reconciled once the counterparties are obliged to report or, alternatively, will have to be enriched with the counterparties' information in those cases where the counterparties delegate their reporting obligation to their counterparty. The most likely scenario for many of the buy-side counterparties is the delegation on the sell-side, so we tend to believe that, for the sake of efficiency, it will be better if the sell-side's systems are set up with a global view, bearing in mind both the reporting of their proprietary accounts activity and their customers' reporting.

In any case, any type of counterparty is allowed to delegate its reporting in the case it might not be prepared on time, so those buy-side counterparties that are not prepared in time can always opt to delegate, what eases its task.

5. What is the best approach to record that clearing took place?

Specific objective: To ensure that details of a contract which is cleared by a CCP is reported appropriately.

We understand from RTS Art. 3.1 and 3.2 that ESMA supports reporting in one single message or sequence. Even, Art 3.6 mentions that a third party should report the full set of details.

To achieve this objective, we think CCPs should take care of reporting of cleared trades to allow the trade repository to receive just one set of data from the CCP. If not, the TR can receive a report from the counterparties or a different platform (trading or confirmation platforms) and one or two amendments from the CCP. This would generate very complex scenarios.

BME is aware of the fact that currently CCPs do not collect all the data required by ESMA, but taking into account that all market participants and infrastructures should adapt their systems, CCPs could include this information in their data requirements when accepting a trade.

For the case of listed derivatives we would like to point out that as the novation process means the generation of new UTIs, missing the audit trail of the trade before this moment could jeopardize transaction reporting supervision.

Regarding the reporting of bilateral trades taken to a CCP, we would like to point out that if a CCP have to send a modification of the reported contract in order to report the clearing details (as it is stated in Art.5 RTS), if that modification is sent to a different TR, the reconciliation of the original report should be carried out by ESMA in the absence of interconnection between TRs.

We believe that if ESMA does not oblige CCPs to report bilateral trades cleared or does not oblige counterparties and CCPs to agree on the TR to which they should report, very complex scenarios could arise.

Registration of trade repositories. Policy options

1. What is the relevant information to be submitted to ESMA?

Specific objective: To ensure the relevant documentation is submitted to ESMA to enable a thorough and robust assessment of a TR's application for registration.

ESMA describes a number of policies and procedures to be included by a trade repository in its application process, described in the following sections:

- Organisational structure, governance and compliance
- Staffing and remuneration
- Financial resources for the performance of the trade repository
- Conflicts of interests
- Resources and Procedures
- Access rules
- Operational reliability
- Recordkeeping
- Data availability

The existing TR's landscape contains a reduce number of market infrastructures aiming to provide this service. All of them are already known by ESMA and powered by robust and reliable market infrastructures. Therefore we believe ESMA and market participants will not incur in any danger if a not so demanding set of data is required at a first stage, in order to be registered as trade repository under the EMIR regulation.

As trade repositories are currently being designed following EMIR level 1 and 2 regulatory standards, most of these policies and procedures will have to be elaborated ad-hoc. Given the great amount of information required, TRs could suffer delays in their application process due to all this paperwork. This could prevent the proper development and implementation of the regulation, as a delay of the TR's application process can affect the whole industry.

Therefore, due to the reasons provided and the short deadlines for the regulatory implementation, we think ESMA should allow TRs existing in Europe to continue providing their services with a temporary license granted thanks to a lighter application process. Such temporary license will be removed if the TR does not obtain the full registration in a later period.

2. What is the appropriate timeline for a business plan to be included in the information to be provided for registration?

Specific objective: To ensure that TRs provide a business plan for an appropriate time period.

We agree with option 1 (requesting a 3-years business plan), as it is the shortest period requested, especially bearing in mind that the trade repositories' role and the scope of services under the different regulations are not closed yet and will most certainly evolve in the short term.

3. What is the best approach to ensure that TRs have appropriate financial resources Specific objective: To ensure that TRs have the appropriate and prudent level of financial resources enabling it to cover its operational costs.

We agree with ESMA in requiring a TR to hold a minimum of months of operational expenses. BME is of the opinion that while 6 months could be sufficient, for security reasons and in order to satisfy customer requirements, we recommend requesting minimum financial resources for at least 12 months.

4. What is the appropriate information to ensure the operational reliability of a TR? Specific objective: To ensure the operational reliability of a TR

We support option 1 (RTS should specify minimum information to be provided by the trade repository about its operational reliability) and believe ESMA requirements should be aligned with the principles 15 and 17 described in the text "Principles for financial market infrastructures" released by CPSS-IOSCO in April 2012.

5. Should a compliance officer be required? Specific objective: To ensure compliance with the adequate policies and procedures required in order to follow the EMIR regulation.

We believe trade repositories should be required to have a compliance officer or at least a similar post for compliance. The heavy regulatory workload on trade repositories and the special relation that trade repositories are going to have with the different regulators and supervisors recommend the existence of this position.

Public disclosure article 81. Policy options

1. What is the appropriate timeframe for the publication of data by TRs? Specific objective: To ensure that the public accesses updated TR-held data

We support option 3, public reporting on a weekly basis but only for those markets where the mentioned frequency does not harm the normal functioning of the market due to the lack of liquidity. Obviously, the information published by trade repositories is going to be analysed in depth by brokers and traders involved in the market in order to be able to identify significant counterparties and situations of market squeeze. In such a case, a less frequent public disclosure would be more appropriate.