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Re: Review of the technical standards on reporting under Article 9 of EMIR

Dear Sir or Madam,

Deutsche Bank welcomes the opportunity to comment on the above mentioned consultation. We support ESMA's objective of improving trade reporting under EMIR by clarifying and updating the reporting rules. We do have some suggestions which we believe would further improve the accuracy and efficiency of reporting and address the root causes of some of the current difficulties.

International consistency is needed around entity identifiers given the global nature of derivatives markets. An EU only approach mandating the use of Legal Entity Identifiers (LEIs) does not take account of the fact that LEIs are not mandatory in all jurisdictions. Also, there is no globally consistent approach to Unique Trade Identifier (UTI) generation. Until there is international convergence on identifiers there will continue to be obstacles to the smooth operation of reporting despite improved reporting rules in the EU.

Some of the proposals attempt to apply a one size fits all approach in terms of classification but this is not always possible given the differences across products. For example, the proposals around "buyer" and "seller" fields is inconsistent with the fact that for some products there is no buyer or seller. Also, the proposal to delete the "other" category of derivative product is the correct objective but the lack of a common international approach to categorising products may make the deletion of this field impractical at this stage.

Clarification should be provided on the timetable envisaged for the implementation of the requirements. At least nine months are required by market participants to make the changes after the publication of the regulatory technical standards in the Official Journal of the EU, in view of technology changes and other changes being made around ESMA level 2 validations.

Do let us know if you would like to discuss the above points with us or any aspect of our response.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Daniel Trinder', written in a cursive style.

Daniel Trinder
Global Head of Regulatory Policy



1. Clarifications

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 would support the objective of deleting the “other” category if there was consistency in the market and a fully defined categorisation taxonomy. However, in the absence of such conditions there may be a continued use for a catch-all category. While the category is not widely used and could be removed there may be challenges around hybrid trades e.g. an auto-callable swap which has features of an option and a swap. These trades involve underliers from different asset classes and challenge may arise in terms of agreeing which categorisation should be used. A globally consistent Unique Product Identifier (UPI) must be developed so that the “other” category can be deleted. In this regard we support the work being carried out by the International Organisation of Securities Commissions (IOSCO).

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.

Many of the clarifications should help improve the data quality of reports (e.g. changes to reporting counterparty). The proposals in relation to the “buyer” and “seller” in the counterparty side field require further consideration as there may be difficulties in populating and then matching the fields. For some products it will not always be evident who is the buyer or seller or even the payer or receiver e.g. with an FX forward it is not clear who is the buyer and who is the seller. The extent of the problem is reduced the more Financial products Markup Language (FpML) is used but deploying FpML may create challenges for smaller counterparties. If the proposed approach is maintained, clear definitions of buyers/sellers will be required to enable counterparties to populate the fields.

While not addressed under the scope of the present consultation the most significant change that could be made to improve EMIR trade reporting would be the application of a one sided reporting obligation. While currently not possible under EMIR, the 2015 review should examine such a potential change in the reporting obligation.

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.

Smaller counterparties may encounter the greatest operational difficulties in providing accurate values.

For cleared trades, as CCPs provide a settlement price, it is unnecessary for counterparties to also calculate the mark to market price.

The use of negative numbers should be permitted to increase the accuracy of reporting.



2. Adaptations

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.

Alternative identifiers to Legal Entity Identifiers (LEIs) such as the SWIFT and BIC codes must continue to be acceptable as not all non-EEA jurisdictions require the use of LEIs. The current proposal to remove the possibility to use alternative identifiers is therefore problematic especially in the context of cross-border trades. Given the global nature of the derivatives markets international consistency is required around all entity identifiers.

If the current approach is maintained clarification would be required on how the reporting counterparty ID field should be reported where counterparties are not obliged to have an LEI and also which code should be used in case of private individuals.

The approach to the report tracking number could be improved to address inconsistent reporting of a group of reports related to the same execution by employing a “sequential I.D.” to link trades which relate to same transaction or event and different parties (e.g. a cleared trade scenario).

Further clarification is required around certain action types, e.g. R (correction) and E (error) are not granular enough and are open to interpretation. Further, multiple other trade actions are already being reported to trade repositories (such as ‘novation’, ‘aggregation’ and ‘termination’) but they can be ‘bundled’ into a reduced number of trade actions (such as ‘transaction type’ including ‘trade, amendment, termination, actions’) before further reporting to ESMA/National Competent Authorities (NCAs). Bundling, which results in regulators receiving less information, should not be permitted.

We agree with splitting the notional amount field into two fields but rather than reporting the "original notional", "traded notional" should be reported as it may be difficult to retrieve the original notional amount in certain circumstances, e.g. for Total Return Swaps with resetting notional.

3. Introductions

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.

The forthcoming requirements on margining for non-cleared derivatives should make the netting of collateral between counterparties before posting and receiving less frequent. However, for legacy net Credit Support Annexes (CSA) supporting uncleared derivatives there will still continue to be circumstances where Initial Margin (IM) and Variation Margin (VM) are combined and transferred as a single collateral balance. It will be necessary to decide how to report these combined IM and VM balances / values. One solution would be to add further fields for netted collateral. This would be preferable to splitting out a single collateral balance into the IM and VM components according to a pro rata allocation of exposure.

The approach to collateralisation flag in field 22 raises some challenges. It may result in misrepresentation of the level of collateralisation, i.e. flagging as partially collateralised



when this is not an accurate reflection of reality. This occurs because the definitions for the “partially”, “one way” and “fully collateralised” fields require firms to refer to the collateral agreement between the parties to determine what value to report. However, the uncollateralised instructions reference the circumstance where the reporting party is not posting any collateral at any given time despite the fact that at any given time there may frequently be circumstances where one party may not be posting VM to the other even where the collateral agreement between two parties states that either one or both counterparties will regularly post VM. The instructions for determining when to report “uncollateralised” should be changed as follows – “uncollateralised = when no collateral agreement exists between the counterparties”.

Convergence towards a single global UTI is not advanced by the proposed decision making approach under article 1 (2)(d) of the draft Regulatory Technical Standard as it establishes a unique EU approach to UTI generation by referring to the EMIR terminology of Financial Counterparty and Non-Financial Counterparty. This means it would not be consistent with the work being done at IOSCO level to promote a global approach to UTI generation. Absent an internationally consistent approach, there will continue to be obstacles to smooth reporting where trades take place with non-EEA entities.

Where LEIs are used, the country of domicile of the other counterparty should be derived from them in the first instance.

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

As certain derivative contracts require negative values to be expressed, we do not believe that there should be a restriction on the reporting of negative values.

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.

This may create additional burdens for counterparties who report on behalf of their clients – as it may necessitate a revalidation of the client’s reporting data. In the first instance, the information could be tied to LEIs (where they are used) by adding an additional field capturing this information that must be completed when LEIs undergo their annual recertification exercise. While this may not work in the case where counterparties are not obliged or eligible to secure a LEI, for those counterparties that can, a mandatory obligation in this regard would significantly reduce burdens around processing static data.

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.

There is currently a lack of standardisation and common way to report across the market. Not all trades will have International Securities Identification Numbers as underliers e.g. some bespoke OTC instruments that use various pricing parameters or a derivative on a derivatives e.g. swap on a future. Consequently, a simple size fits all approach as proposed will not be efficient and if the current proposal is applied, it could result in more rejections at the trade repository.



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.

Credit is the most standardised of all of the asset classes and arguably already provides the most granular and transparent reporting. The asset class has developed to such an extent that it benefits from standard contracts which in turn facilitates electronic confirmation of 99% of all OTC trades. As such most trades can be clearly identified and inherent terms and conditions (e.g. payment frequency) implied from the name of the contract. Introducing further fields to prove the derivation of the coupon and any relevant fee adds little additional value to the process relative to the increased complexity it entails. We would however support moves to ensure clarity around the seniority of the underlying Reference Obligation and a simple classification to senior, subordinated or other would be helpful in highlighting the appropriate risk category. Similarly adding more information to fields 71 and 72 would assist in fully identifying the versioning of the relevant index, date and series.

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?

Currently there is no standard market approach to trade and risk booking or indeed the logic and prior motivation to create one. Instead systems and procedures have developed to meet each user's individual needs and the capabilities of their infrastructure. As such the industry faces a major challenge to harmonise methodologies which can also differ by asset class as well as by booking strategy.

Deutsche Bank fully supports current industry initiatives to create linkages between bookings that will identify strategies and allow a standard way of trade reporting. Firms will need to reconcile their trade populations so that multi-leg bookings can pair with trades booked as strategies. Strategies that are confirmed in their constituent parts should be reported as such (report as you confirm principle), and an independent I.D., such as a "swap tracking number", should be attached to all constituent parts enabling ESMA/NCAs to assess the overall strategy.

Through the use of primary trade UTIs, firms will be able solve part of the reconciliation problem but it forms only one part of a much wider issue. Firms need to consider bringing together portfolio reconciliation, collateral and valuation reporting with the need to pair and report UTI's as well as the ability to identify cross asset structures. All of these functions share the same requirement to recognise paired trades regardless of the way they might have originally been booked. Trades need to be linked vertically and horizontally, across and through the front to back by leveraging the use of the UTI. In order to procure the most value out of the pairing process there needs to be a consistent approach to the use of the UTI not just across the processes to which it applies but across jurisdictions. Global consistency is vital to firms and vendors alike and provides the stability needed to allow them to standardise processes.



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:

- **Para. 56: 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;**
- **Para. 57: 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;**
- **Para. 58: 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;**
- **Para. 59: 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.**

'Currency Options' should be added to paragraph 56 as contractual payments are derived from the original notional rather than an underlying asset.

Clarification is required on the meaning of 'conclusion of the contract'.