



European Securities and Markets Authority

103 rue de Grenelle

75007 PARIS

13 February 2015

Dear Sirs

Subject: Response to ESMA's Consultation on the technical standards on reporting under Article 9 of EMIR

We appreciate this opportunity to respond to ESMA's Consultation on the technical standards on reporting under Article 9 of EMIR.

The EACT remains supportive of enhancements that will clarify and simplify reporting requirements, assuming that sufficient lead-time is allowed for implementation. However, as an association whose members (they are individuals) generally work in non-financial counterparties (or "corporates"), we are unable to respond directly to the particular field changes set forth by ESMA in the consultation, since these changes would first have to be implemented in the global Trade Repository templates for corporates to review and then make changes in their internal systems.

Our response reflects two areas of consideration arising out of the further revision of reporting requirements:

1. Sufficient Lead-Time To Implement Changes

We note that whilst ESMA is striving to 'ensure a consistent and harmonised way of reporting', the fact that changes and adaptations to the rules are still being made one year after the implementation date is hindering corporates from evolving such processes into a steady state of operation.

- We would like to ensure that there is minimal disruption to the existing reporting structures in place. Non-financial counterparties have invested much resource into ensuring that they can report accurately and in a timely fashion and **further enhancements should not result in large scale changes required to the existing reporting set-ups**; and,
- We would also like to ensure that appropriate time is allowed for such changes to be adopted. The **Trade Repositories must have sufficient time to implement and test the new enhancements in a manner least disruptive to their corporate clients reporting the trades. In turn, corporates would then need to implement these changes, which would require further time** for project management.
- We would expect that the new technical requirements would apply only to new transactions and not to previously reported but non-reconciled files ; we would appreciate if ESMA could give clear guidance on this topic.

2. Further Clarification of Scope

Additional clarity can come from focusing the scope of the reporting requirement on areas of increased inherent risk and excluding transactions that are not systemically risky. This can be achieved through:

- **Introducing an EU wide exemption of intragroup transactions for non-financial counterparties from the reporting requirement.** This exemption would allow both regulators and reporters to focus their attention on areas that regulators might be consider could give rise to systemic risk and away from intragroup transactions, that by no stretch of regulatory imagination could be considered a potential source of such risk from non-financial counterparties; and
- **Clarifying the scope of an FX derivative to exclude FX contracts used for commercial/hedging purposes** by corporates. The EU Commission acknowledged [in published letter to ESMA, 23 July 2014] that there is a *'broad consensus...[that]...a FX contract that is used as a means of payment to facilitate payment for goods and services should also be also considered a FX spot contract'* . This recognition that such contracts do not contribute significantly to systemic risk is welcomed by the EACT and we would encourage ESMA to issue guidance at the soonest opportunity endorsing this interpretation of FX contracts, pending possible formal adoption in MiFID II.

We also believe that all parties would benefit if the number of reconcilable fields would be decreased and concentrated on fields that contain information necessary for reconciliation. This would in our view limit the number of mismatches – of which a significant proportion are in our experience due to technical mismatches and not to a

real mismatch in the reported data. ESMA should furthermore clarify that counterparties to a transaction should not require a specific content on non-mandatory fields; non-financial counterparties are often faced with a mismatch due to financial counterparties expecting a specific content for non-mandatory fields and the required content differs from one financial counterparty to another.

We remain at your disposal for any questions and thank you for considering our input to the consultation.

Yours sincerely,

A handwritten signature in black ink, reading "Richard Raeburn". The signature is written in a cursive style with a large initial 'R'.

Richard Raeburn
Chair – European Association of Corporate Treasurers