



19th March 2012

European Securities and Markets Authority

103 Rue de Grenelle

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Paris

France

Re ESMA/2012/95 - Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories

SWIFT is pleased to respond to the above discussion paper on the draft technical standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories. Our comments are focused on those areas pertaining to access to the market infrastructures covered by the regulation, with a particular focus on the regulatory reporting obligations.

SWIFT is a member-owned, cooperatives society that provides its community of banking, securities, market infrastructures and other regulated organisations, as well as corporations, with a comprehensive suite of messaging products and services. Through these products and services SWIFT supports every aspect of global financial services, including payments processing and securities post trading. SWIFT also has a proven track record of bringing the financial community together to work collaboratively, through its country National Member Groups, to shape market practice, define formal standards and debate issues of mutual interest. SWIFT is organised under Belgian law and is owned and controlled by its shareholding users, comprising over 2,300 financial institutions. The user community exceeds 9,600 connected firms, across 210 countries. A fundamental aim of SWIFT's governance is to continually reduce the costs and risks borne by the industry.

SWIFT is already actively engaged in the Financial Stability Board (FSB) process for the identification of a solution for legal entity identification (LEI), which is highly relevant to the reporting aspects of the Regulation. We would be pleased to engage further with ESMA on other aspects of the reporting required under the Regulation, and indeed to further elaborate on any aspects of our comments.

Yours sincerely

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General Comment

At the general level we believe that ESMA, in drawing up its technical standards, should apply the principles enshrined in recital 53a of the EMIR text in terms of the accommodation by CCPs and trade repositories of the “relevant international communication procedures and standards for messaging and reference data”.

We believe that the widest possible adoption by market infrastructures of standard communication procedures and data standards in the context of EMIR, and other related regulation, will help to reduce operational risks for financial firms linking to multiple market infrastructures (in the case of EMIR, specifically CCPs and trade repositories).

In the area of reporting to trade repositories, which forms an important element in the legislation, we believe it is particularly important that regulatory authorities in the EU, and indeed globally, agree upon the data elements required to be reported, and the standards which should be used for those data elements. Such an approach would bring greater certainty for those financial firms obliged to report in the EU, as well as in third countries. Such an approach will also enable better data aggregation by regulatory authorities across different markets.

In this regard we particularly support the current FSB process to identify a global solution for Legal Entity Identification (LEI), in terms of regulatory reporting generally.

Responses to Specific Questions

Q69 What is your view on the need to ensure consistency between different transaction reporting mechanisms and the best ways to address it, having in mind any specific items to be reported where particular challenges could be anticipated?

It is clearly right to ensure that regulatory reporting avoids unnecessary duplication and that a consistent approach across different reporting flows is taken. Therefore the opportunity should not be missed to ensure that the reporting required under both EMIR and MiFID is consistent. We would support the suggestion in the paper that a trade repository should be able to qualify as an ARM under MiFID, thus enabling a reporting obligation under both regimes to be satisfied with one reporting process, rather than two.

Key to enabling this in practice is consistency in the data sets to be reported, and in the standards associated with those data sets. One of the issues with the original MiFID reporting was the absence of a standardised approach across member states. The reporting under EMIR should seek to achieve a high level of consistency and standardisation, and be an enabler for further progress on the standardisation of MiFID transaction reporting in the future.

SWIFT has noted the format suggestions for EMIR reporting fields contained in tables 1 and 2 in the discussion paper. We would be most pleased to discuss separately with ESMA detailed options for some of these fields, arising from our experience in the development of messaging under ISO 20022, and to help to ensure consistency with MiFID reporting.

Q70 Are the possible fields included under Parties to the Contract sufficient to accurately identify counterparties? What other fields or formats could be considered?

Once it is available, the identification of counterparties should be limited to the LEI. This will be simpler and more efficient for all the impacted parties; industry, trade repositories and regulatory authorities.

In the interim we would support the use of BIC for those entities which have them.

Q71 How should beneficiaries be identified for the purpose of reporting to a TR, notably in the case of long chains of beneficiaries?

We would agree that once again LEI (when available) would be the best way to address this issue. Beneficiaries outside the scope of LEI would need to be captured with a client coding system.

Q72 What are the main challenges and possible solutions associated to counterparty codes? Do you consider that a better identifier than a client code could be used for the purpose of identifying individuals?

As mentioned earlier, SWIFT supports the introduction of a global legal entity identifier (LEI), to be used on all required reporting of transactions or positions by financial services firms to regulators and other public bodies responsible for systemic risk monitoring. Under such a scheme each counterparty to a transaction should be identified by a single unique identifier. Any legal entity that enters into financial transactions should be eligible for an LEI, but individuals would be out of scope of the LEI scheme.

SWIFT has been working with the industry through the Trade Associations Group which in July, 2011 made a recommendation on a potential LEI solution, together with solution providers (ISO, SWIFT, ANNA and DTCC), to global regulators. Since then significant work has been accomplished by the industry around the draft ISO 17442 LEI standard, and the requirements for a registration process and establishment of a free public database. Further, SWIFT is a member of the FSB's Industry Advisory Panel, chartered to advise the FSB Expert Group which is making recommendations around LEI implementation to the G-20 this spring. We believe there are several key challenges to successfully implementing a global LEI, and that they are all being addressed through the FSB process including the governance framework, funding model, operating model, scope of the reference data to be attached to the LEI and the proper implementation phasing across participants in various asset classes and geographic markets.

We know that ESMA is fully engaged in the work of the FSB process leading towards the LEI implementation, and we would certainly wish to see a general leveraging of the LEI in the final technical standards developed for reporting in EMIR.

Q73 What taxonomy and codes should be used for identifying derivatives products when reporting to TRs, particularly as regards commodities or other assets for which ISIN cannot be used?

As with other key data elements it is important to ensure a consistent approach globally on this issue. We would support the industry working together with authorities on the development of UPIs to fill the gaps in the coverage offered by other open identification schemes. A collaborative approach is the best way to ensure the optimum balance between operational efficiency for the industry and the right level of data granularity and clarity for regulatory authorities.