

European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

13 February 2015

RE: Consultation Paper on Review of the technical standards on reporting under Article 9 of EMIR

Dear Sirs

Chatham Financial (“Chatham”) is pleased to respond to the European Securities and Markets Authority (“ESMA”) Consultation Paper on “Review of the technical standards on reporting under Article 9 of EMIR” (“Consultation Paper”). Chatham is a leading, independent advisory and technology firm that advises and provides services to end users of derivatives as they seek to manage interest rate, commodity and currency risks. We are a global firm with operations in Europe, the United States and Asia, and we work with over 1,600 clients from virtually all business sectors, including nonfinancial corporations, real estate companies, infrastructure investors, energy producers, and micro-finance funds. Our clients use derivatives to reduce risk associated with operating and investing in the real economy. They do not use derivatives for speculative or investment purposes. We assist our clients with all facets of the hedging process, from analyzing risk, to structuring and executing hedges, to providing ongoing valuations, reporting, accounting and regulatory support.

Chatham assists its clients with various aspects of derivatives regulatory compliance, including reporting of swaps to a Trade Repository. Since the onset of derivatives regulation globally, we have reported over 30,000 trades on behalf of our clients to assist with both EMIR and Dodd-Frank compliance. This experience has given us significant insight into reporting issues relevant to nonfinancial and financial end users. Our comments to the consultation reflect this experiential insight.

We appreciate the opportunity to provide comments to ESMA in connection with the Consultation Paper. Chatham has been an active participant in the public policy dialogue on the efficient and effective regulation of the derivatives market. Our participation reflects a conviction that the imposition of regulatory burdens on end users should be carefully considered, taking into account costs and benefits, to ensure that regulations do not unnecessarily burden the economy or deter end users from managing their risks. Proportionate treatment of end users is justified based on the limited risk contribution they pose to the financial system.¹ The responses provided herein are intended to assist ESMA in identifying ways it can tailor its technical standards to minimize burdens on end users – an objective we believe can be achieved without materially impacting the risk mitigation or transparency objectives of EMIR.

In this comment letter we offer feedback on three questions posed by ESMA, with feedback pertinent to the following four fields: (1) Counterparty Side, (2) Corporate Sector of Counterparty, (3) Notional Amount and (4) Country of the Other Counterparty.

¹ The limited systemic risk contribution of end users has been widely acknowledged by regulatory bodies in the EU and internationally. For example, in the September 2013 consultation on “Margin Requirements for Non-Centrally Cleared Derivatives,” the Basel Committee on Banking Supervision and IOSCO wrote, “The BCBS and IOSCO believe that the margin requirements need not apply to non-centrally cleared derivatives to which non-financial entities that are not systemically important are a party, given that (i) **such transactions are viewed as posing little or no systemic risk** and (ii) such transactions are exempted from central clearing mandates under most national regimes.” (emphasis added)

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.

Paragraph 25: Counterparty Side

We have concerns about ESMA's proposal to clarify the buy/sell indicator through a set of rules because the rules do not address all cases. For example, the rules proposed by ESMA do not address basis swaps in which neither party pays a fixed rate. Additionally, for FX swaps involving an initial exchange of two currencies and a subsequent reverse exchange of the same two currencies, it is unclear from the rules which counterparty is the buyer and which is the seller.

Rather than creating additional rules, we would prefer to see the buy/sell indicator be made optional for derivatives transactions that do not have a clear buyer/seller. The buy/sell indicator is not a concept well understood by those that use over-the-counter derivatives (OTCDs). By contrast, it is generally well understood with respect to exchange-traded derivatives (ETDs). Attempting to apply buy/sell terms to the OTCD market is likely to cause unnecessary confusion for end users, which will ultimately impair data quality. We believe making this field optional will avoid forcing end users to select an option when they are uncertain as to how their transaction maps to this unfamiliar terminology.

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 new difficulties? Please elaborate.

Paragraphs 30 & 31: Corporate Sector of the Counterparty

ESMA proposes to require that the "Corporate Sector of the Counterparty" field be populated by Non-Financials. We urge ESMA to consider limiting this requirement to just NFC+ entities and/or making it optional for NFC- entities because it creates an operational burden for parties that report on behalf of end users. Many end users delegate reporting, either to their counterparties or to a third party like Chatham. For these reporting firms, obtaining this information from large numbers of end users would be challenging. Given the broad policy consensus that end users as a whole pose little risk to financial stability, we believe that a requirement for end users to identify their sector and report it adds to the complexity of delegated reporting, while providing little benefit to regulators in exchange. We believe making this field optional or applying it only to NFC+s will do little to degrade ESMA's ability to assess end-user hedging activity in a manner that furthers the regulatory objectives of EMIR.

Paragraph 33: Country of the Other Counterparty

ESMA proposes to require the "Country Code of the Other Counterparty" to be reported. We note that the domicile of an entity's counterparty is available as static data provided at the time an entity obtains its Legal Entity Identifier. We note that for a similar field – "Domicile of the Counterparty" – ESMA permits the field to be left blank "if the reporting party is identified using a Legal Entity Identifier (LEI)." We urge ESMA to use a similar approach for "Country Code of the Other Counterparty." Specifically, we urge that ESMA similarly permits this field to be left blank when an entity reports the LEI of its counterparty. Such an approach would reduce the reporting burden for end users, even while ensuring ESMA has access to the relevant data.

Paragraph 34: Notional Amount

ESMA proposes to split "Notional Amount" into two fields – "Original Notional" and "Actual Notional." We acknowledge that it may be appropriate under certain methods of reporting (i.e.,

those who provide a daily snapshot of their entire portfolio) to differentiate between original and actual notional. However, certain other methods of reporting (e.g., reporting trades using FPML) allow a reporting party to provide the full notional schedule of a hedge when it initially reports. We urge ESMA to consider entities utilizing such reporting methods in its approach to notional-amount reporting. Under the proposed approach, such entities – which have invested in systems capabilities that allow them to report only at inception of a trade and upon certain lifecycle events – would be forced to substantially increase the frequency of reporting to report information which they have already reported – i.e., the notional used in the current period to calculate payments. On a 10-year monthly amortizing swap, the proposal would add 120 reporting events that such entities would otherwise not have been required to report. As such, we urge ESMA to permit actual notionals to be reported one-time at inception of a trade, in line with the technological capabilities afforded by FPML.

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.

Paragraph 45: Country of the Other Counterparty

Please see comments for Q4, Paragraph 33.

Paragraph 46: Corporate Sector of the Counterparty

Please see comments for Q4, Paragraphs 30 & 31.

Thank you for considering these comments. Please contact Luke Zubrod (lzubrod@chathamfinancial.com) or Pam Brown (pbrown@chathamfinancial.com) if you have any questions.

Sincerely,



Luke Zubrod
Director, Risk & Regulatory Advisory Services



Pam Brown
Product Manager, Regulatory Compliance Technology