

European Securities and Markets Authority (ESMA)  
CS 60747 – 103 rue de Grenelle  
75345 Paris Cedex 07  
France

**Re: Response to Consultation Paper – Review of technical standards on reporting under Article 9 of EMIR<sup>1</sup> (the Consultation Paper)<sup>2</sup>**

**1. Introduction and summary**

The Asset Management Group (the **AMG**)<sup>3</sup> of the Securities Industry and Financial Markets Association (**SIFMA**) welcomes this opportunity to contribute to your consideration of the improvements that could be made to the RTS<sup>4</sup> and ITS<sup>5</sup> so as to ensure the consistent application of the reporting obligation for counterparties and CCPs under Article 9 of EMIR (the **Reporting Obligation**).

In this response, the AMG first sets out some general considerations which it believes ESMA should take into account when implementing any amendments to the RTS or ITS. In this section, the AMG does not respond to any particular questions in the Consultation Paper. Secondly, the AMG provides its responses to particular questions raised by ESMA in the Consultation Paper. Finally, the AMG comments on the nature of the Reporting Obligation under EMIR and suggests an alternative method to reporting transactions which would eliminate issues over data matching, make implementation easier from an operations perspective and improve the quality of data available to ESMA and any relevant regulators.

**2. Implementation of amendments to the Reporting Obligation**

The AMG is supportive of ESMA's aim of improving the Reporting Obligation so that reports can better fulfill their objective. However, the AMG has serious concerns in relation to the manner in which any amendments to the Reporting Obligation are made. The AMG believes that ESMA should fully consider the following issues.

**2.1 Phase-in**

The AMG has substantial reservations in relation to the timing for implementing an amended Reporting Obligation. Market participants should be given sufficient time to prepare for any changes to the existing Reporting Obligation as otherwise there is a serious risk that reports will be inaccurate and report matching levels will be low. The following steps will need to be taken by

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<sup>1</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (**EMIR**).

<sup>2</sup> ESMA Consultation Paper: Review of the technical standards on reporting under Article 9 of EMIR published on 10 November 2014 with a draft of the proposed regulatory technical standards at Annex IV (the **Proposed RTS**) and a draft of the proposed implementing technical standards at Annex V (the **Proposed ITS**). A reference to **Table 1** or **Table 2** in this response is a reference to the relevant table in the Proposed RTS and/or the Proposed ITS.

<sup>3</sup> The AMG's members represent US asset management firms whose combined assets under management exceed \$30 trillion. The clients of AMG member firms include, among others, registered investment companies, endowments, state and local government pension funds, private sector Employee Retirement Income Security Act of 1974 pension funds and private funds such as hedge funds and private equity funds.

<sup>4</sup> Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories (the **RTS**).

<sup>5</sup> Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (the **ITS**).

AMG members (and other market participants) in order to implement an amended Reporting Obligation:

- (a) data collection with counterparties in respect of new or amended data fields;
- (b) client outreach (of an asset manager's own clients) to obtain data with respect to new or amended data fields;
- (c) adoption of operational procedures to reflect new or amended data fields; and
- (d) technology build / update to reflect new or amended data fields (including coordinating with the reporting hardware providers).

These steps will need to be taken in relation to at least the following amended data fields: Field 4 of Table 1 (country of the other counterparty); Field 7 of Table 1 (corporate sector of counterparty); Field 8 of Table 1 (nature of reporting counterparty); Fields 17 and 18 of Table 1 (mark-to-market fields); Fields 25 to 32 of Table 1 (collateral valuation); Fields 5 to 8 of Table 2 (product and underlying identification); Fields 19 and 20 of Table 2 (notional amounts); Fields 36 and 37 of Table 2 (formatting of time periods); and Field 73 of Table 2 (actions).<sup>6</sup>

ESMA should also note that trade repositories will need sufficient time to ensure they are able to properly record data in relation to the amended data fields.

To give market participants sufficient time to complete the above steps, the AMG suggests a minimum timeframe for implementation of at least 9 months from the date the amended RTS and ITS enter into force.

When considering the timeframe for implementation, ESMA should also consider that market participants may need to obtain information from third country entities. As third country entities have no obligation to report under EMIR (and may have no obligation to report derivatives transactions in their own jurisdiction) it may take longer to obtain and agree on the relevant data. Unless market participants have sufficient time to agree and collect the relevant data from their third country entity clients, it is likely reports will contain errors and a full understanding of the market will be obscured.

## 2.2 Application

The AMG feels strongly that ESMA should clarify the scope of the application of the amended Reporting Obligation. In particular, ESMA should confirm that the amended Reporting Obligation should only apply to transactions that are entered into on or after the date the amended RTS and ITS enter into force. It will be extremely difficult, if not impossible, from an operational perspective, and very costly, for counterparties to re-report transactions which have already been reported to a trade repository before the amended Reporting Obligation takes effect.

In particular, ESMA should clarify that the following transactions are out of scope of the amended Reporting Obligation:

- (a) any transaction which is entered into before the amended Reporting Obligation takes effect; and
- (b) any transaction which is (or which will be) reported under the existing Reporting Obligation which is modified after the amended Reporting Obligation takes effect.

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<sup>6</sup> This list is for illustrative purposes and should not be considered to be an exhaustive list.

The following transactions should be excluded by operation of limb (a): (i) all transactions which are reported to a trade repository before the amended Reporting Obligation takes effect; and (ii) any transactions which were entered into before the amended Reporting Obligation takes effect but have not yet been reported to a trade repository (e.g. because we have not yet reached the start date for reporting such transactions (for example, transactions which were outstanding on, or entered into on or after, 16 August 2012 but were not outstanding on 12 February 2014, which must be reported by 12 February 2017)). In relation to (i), and as discussed above, it will be very difficult operationally (if not impossible) and extremely costly for market participants to re-report all trades already reported to a trade repository. In relation to (ii), and, in addition to the points applicable to (i) above, market participants may be at different stages in reporting such transactions. This means that market participants which have already reported an existing transaction (e.g. prior to the deadline to reporting such transactions) will have reported under the taxonomy of the existing Reporting Obligation, while their counterparty (which has not yet reported) may report under the taxonomy of the amended Reporting Obligation. This would create considerable issues in relation to matching and data quality and as a result, all transactions entered into before the amended Reporting Obligation takes effect should be excluded from the amended Reporting Obligation.

In relation to limb (b), any life cycle events which need to be reported in respect of a transaction which has (or which will be) reported under the existing Reporting Obligation should be reported using the taxonomy of the original Reporting Obligation (i.e. using the taxonomy under which they were first reported). It would be very difficult and overly burdensome on market participants to require modifications to be reported under a new taxonomy.

The AMG also requests that ESMA clarifies how novations<sup>7</sup> are reported after the amended Reporting Obligation takes effect.

### 3. Responses to ESMA Questions

The AMG has not responded to each of the questions set out in the Consultation Paper. Instead, the AMG has set out the relevant questions and its responses below.

*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.*

The AMG is concerned that by removing “Other” as a category from derivative class and type descriptions, counterparties will increasingly use “Swap” as the default position. Many derivative transactions can be described as a swap so it is possible that by removing “Other”, the problem identified by ESMA in the Consultation Paper is merely shifted as more “Swaps” are reported. As there may be limited benefit to removing the “Other” category, the AMG suggests that the operational burden created by its removal will be disproportionate and, as a result, would suggest that this option is retained. ESMA could also consider expanding the product categories thereby reducing the need for counterparties to use the “Other” option.

*Q3: What difficulties do you anticipate with the approaches for the population of the mark to market valuation described in paragraphs 21 or [19]<sup>8</sup> respectively? Please elaborate and specify for each*

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<sup>7</sup> The AMG notes that as a novation is technically the early termination of the existing transaction and a new transaction coming into existence, the following should apply:

- (a) in respect of the terminating transaction, this should be reported in accordance with the taxonomy under the existing Reporting Obligation as “C” (cancel); and
- (b) in respect of the new transaction, this should be reported in accordance with the taxonomy under the amended Reporting Obligation.

<sup>8</sup> We note that this should refer to paragraph 23.

*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.*

The AMG is supportive of ESMA's intention to obtain better data in respect of valuation. The AMG also supports the exclusion of variation margin (and initial margin) from the valuation calculation. However, the AMG has reservations over the requirement in respect of valuation becoming overly prescriptive, leading to an outcome where: (a) counterparties are being required to make multiple valuation calculations in respect of their obligations under EMIR (e.g. in respect of the reporting obligation, daily valuation, portfolio reconciliation and, when implemented, margin obligations (if applicable)); and (b) the regulatory valuation requirements are different to market practice or valuation mechanism included in the relevant agreement in respect of that transaction. These outcomes are undesirable from an operations and cost perspective and will make compliance with the relevant regulation difficult.

To the extent ESMA wishes to proceed with their proposal in the current form, the AMG thinks it would be helpful for ESMA to provide examples of valuations for the different product types which market participants can comment upon. These examples would act as helpful guidelines for market participants when considering valuations for the purpose of the Reporting Obligation.

*Q4: Do you think the adaptations illustrated in this section [Adaptations] adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.*

(a) "Country of the other counterparty"

The AMG questions the necessity of field 4 of Table 1. ESMA and other applicable regulators will be able to obtain this information from the counterparty's LEI number (which is reported in field 3 of Table 1) meaning this field is unnecessary.<sup>9</sup>

Moreover, the Proposed RTS refers to the "domicile" of the other counterparty. This differs from the use of "established" which is otherwise used throughout EMIR and could lead to difficulties and/or discrepancies over how to populate this field.

The AMG therefore would suggest that this field is not included in any amended Reporting Obligation and instead regulators should utilise information linked to the counterparty's LEI number. To the extent ESMA considers it necessary to include this field, the AMG recommends that the field should refer to the place in which the counterparty is "established" so as to ensure consistency with EMIR.

(b) "Notional"

The AMG welcomes the proposed amendments by ESMA to split the field "Notional Amount" into "Original notional" and "Actual notional" (fields 19 and 20 of Table 2). For example, the AMG believes that this will be helpful in the context of trades which are re-set as the "Original notional" will remain the notional value of the derivative contract before any re-sets and the "Actual notional" will be the re-set value of the derivative contract.

The AMG wishes to highlight that for this amendment to be implemented in practice, the trade repositories must be capable of recording both the "Original notional" and "Actual

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<sup>9</sup> To the extent an LEI is not used in the trade report (for example, if the counterparty is not eligible for an LEI), either an identifier code which allows the unique identification of the counterparty at a national level or a client code must be used. Regulators should be able to obtain information in relation to the country of incorporation using these codes, if necessary.

notional” as many market participants’ systems do not track both values (i.e. only the “Actual value” is tracked).

(c) “Report Tracking Number”

The AMG suggests that it would be better to re-name the field “External trade reference” which would contain the information suggested in field 13 of Table 2. This should be an optional field. ESMA should clarify that a firm’s internal ID can be used to populate this field.

(d) Actions

The AMG welcomes EMSA’s proposed amendments in respect of including the additional action types (correction code “R” and new trade / compression code “P”) and clarifications on when the relevant action types should be used.

The AMG would welcome any examples of using action types that ESMA could provide.

*Q5: Do you think the introduction of new values and fields [in the Introductions 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.*

(a) Underlying identification

It would be helpful for ESMA to provide a list of acceptable UPIs (at the appropriate time) for the purpose of populating field 8 of Table 2 (for where UPI is the relevant underlying identification type).

(b) Collateral Valuation

In general, the AMG welcomes EMSA’s proposals to report data in relation to initial margin posted and collected and variation margin posted and collected separately in fields 25 to 32 of Table 1. However, the AMG questions whether, if both counterparties to a transaction are required to report, it is necessary for the counterparties to report both collateral posted and collected. ESMA and the relevant regulators will have the data in respect of the amount of collateral collected by a counterparty by looking at the other entity’s report which will state the amount of collateral it has posted. It should not, therefore, be necessary to include data on what a counterparty has collected where both counterparties have submitted (or are required to submit) a report. To the extent ESMA agrees with the AMG’s proposals in relation to single-sided reporting (see paragraph 4 below), the AMG agrees that it would be necessary for the reporting party to report collateral posted and collected.

The current proposal in respect of reporting collateral creates considerable difficulties for counterparties (which are not subject to all or part of the margin requirements under Article 11 of EMIR and) which net initial margin and variation margin amounts and post and/or collect a single sum in respect of initial margin and variation margin. Even when the margin requirements are fully introduced, this problem will remain and be exacerbated by a distinction needing to be made between legacy and non-legacy transactions for margin purposes. To eliminate this issue, the AMG proposes that ESMA includes additional reporting fields which allow parties to report a net amount of initial margin and variation margin posted and received as an alternative to completing fields 25 to 32 (the **Net Margin Fields**). The Net Margin Fields would be left blank by counterparties which post and collect initial margin and variation margin on a gross basis and can complete fields 25 to 32 instead.

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

The AMG is supportive of ESMA's proposal to permit negative values. Wherever it is possible for a loss to be reported, a negative value should be permitted. This would include: field 17 of Table 1 (Value of contract); fields 25, 27, 29 and 31 of Table 1 (initial margin and variation margin posted and received)<sup>10</sup>; and field 23 of Table 2 (Up-front payment).

*Q7: Do you anticipate any difficulties with populating the corporate sector of the reporting counterparty field for non-financials as described in paragraph [42]<sup>11</sup>? Please elaborate.*

The AMG does not think that it is necessary to include a field which requires a non-financial counterparty to specify its area of commercial activity in field 7 of Table 1 and suggests that the taxonomy in respect of non-financial counterparties is deleted. It will be time consuming and costly for market participants to perform a client outreach programme to obtain this data and reporting counterparties will be unable accurately to complete the reports if their counterparty does not provide the relevant information. Moreover, the AMG questions the purpose for which ESMA and any applicable regulators need this information in respect of non-financial counterparties as it is difficult to see how this contributes to the effective identification, monitoring and assessment of systemic risk. Rather than obtaining more information (potentially with limited value), the AMG's view is that the industry and regulators should concentrate on improving the quality of essential data.

*Q8: Do you envisage any difficulties with the approach described in paragraph [45]<sup>12</sup> 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.*

Where a basket ("B") has been identified as the "Underlying identification type" in field 7 of Table 2, it is proposed that the "Underlying identifier" in field 8 is populated with "all individual components identified through ISO 61666 ISIN or complete AIF" (see the Proposed ITS) and, if the basket is composed of, among other things, financial instruments traded on a trading venue, only the financial instruments need to be specified (see the Proposed RTS).

The AMG understands that ESMA's intention is for the trade report to specify the individual components of the relevant underlying (i.e. the basket). However, the AMG would like greater clarity on this. In particular, ESMA should confirm: (a) that there is no need to submit a separate trade report for each underlying in the basket; and (b) how a basket with different sub-components which have lots of different underlying assets should be reported in the trade report.

In addition, ESMA should confirm (a) what information is required to be reported where the basket is composed of only non-financial instruments or financial instruments that are not traded on a trading venue; and (b) where the basket is composed partly of financial instruments traded on a trading venue and partly of other instruments, how the trade report should indicate these other instruments comprise part of the basket.

*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.*

The AMG considers that the proposals in relation to credit derivatives (section 2i of Table 2) are too detailed. The trade report should only contain the necessary information and as such the AMG

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<sup>10</sup> Note that to the extent ESMA agrees with the AMG's proposal to only require a report to specify collateral posted, there would be no need for negative values in respect of collateral.

<sup>11</sup> We note that this should refer to paragraph 46.

<sup>12</sup> We note that this should refer to paragraph 49.

proposes that “Seniority” (field 68 of Table 2), “Series” (field 71 of Table 2) and “Index factor” (field 72 of Table 2) are not required. The AMG would also like to highlight that when a common identifier for these types of products has been agreed, all information in the proposed section 2i of Table 2 will be included in the common identifier. It would be better to report credit derivatives using the common identifier (when agreed) rather than introducing these additional data fields in section 2i of Table 2.

#### 4. Nature of Reporting Obligation

The AMG would like to use this opportunity to re-affirm its belief that the main objective of the Reporting Obligation, to “allow for a comprehensive overview of the derivative market and to enable the identification, monitoring and assessment of systemic risk”<sup>13</sup>, can be satisfied by obtaining comprehensive trade reports from *one* of the counterparties to the transaction. Rather than imposing the Reporting Obligation on *both* counterparties to a transaction, ESMA should consider requiring only one counterparty to report (the **Reporting Party**). ESMA could consider specifying a hierarchy which sets out which counterparty would report. For example, where the transaction involves an FC, the FC would be the Reporting Party (unless the transaction is between two FCs, in which case the counterparties should be required to agree which would report). Equally, where the transaction is between an NFC+ and an NFC-, the NFC+ would be the Reporting Party. If an EU entity is trading with a third country entity, only the EU entity would report (as is the case currently).

The Reporting Party’s report would contain all information in respect of the derivative transaction for ESMA and any relevant regulators to obtain a comprehensive overview of the market and identify systemic risk. As the Reporting Party’s report would identify the counterparty to the derivative transaction, ESMA and any relevant regulators would be able to monitor the positions and portfolios of all market participants without the need for both counterparties to submit their own trade reports. Amending the Reporting Obligation so that it only applies to one party to the derivative transaction would also eliminate issues over data matching and would, therefore, improve the data available to ESMA and any relevant regulators.

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<sup>13</sup> p.3, Letter to Steven Maijoor dated 07.11.2013.

European Securities and Markets Authority  
13 February 2015

We appreciate your consideration of our response and stand ready to provide any additional information or assistance that you might find useful. Should you have any questions, please do not hesitate to contact Lindsey Weber Keljo at +1-202-962-7312.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Cameron', with a long horizontal flourish extending to the right.

Timothy W. Cameron, Esq.  
Managing Director, Asset Management Group – Head  
Securities Industry and Financial Markets Association

A handwritten signature in blue ink, appearing to read 'L. Keljo', with a large, stylized initial 'L'.

Lindsey Weber Keljo  
Vice President and Assistant General Counsel  
Asset Management Group  
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