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Date: 13/02/2015

Dear Sirs

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

The Investment Association represents UK investment managers. We have over 200 members who manage more than £5 trillion for clients around the world. Our aim is to make investment better for clients so they achieve their financial goals, better for companies so they get the capital they need to grow, and better for the economy so that everyone prospers.

We welcome the opportunity to comment on ESMA's proposed changes to the regulatory and implementing technical standards for trade reporting under EMIR. Responses to the specific consultation questions are provided in an annex to this letter, but we would also make the following overarching comments on timing and guidance.

Timeline for delivery of the revised technical standards

The consultation paper offers no insights as to the timescale in which ESMA expects the amended technical standards to be adopted or the legal mechanism by which this will be achieved. It is not clear to us that the European Commission has a delegated power to adopt further or amended technical standards, having adopted those that were delivered by ESMA by 30 September 2012 in accordance with Article 9 of EMIR. We note that the "next steps" section of the consultation paper refers incorrectly to itself as a *final report*.

Reporting guidelines

We would urge ESMA to move away from its present Q&A approach to providing further guidance on its expectations with regard to trade reporting and instead develop and consult on more comprehensive "Level 3" guidelines. These, we believe, are vital to the consistent interpretation by market participants of the requirements and, as such, should include illustrations of what ESMA expects to see reported in the various fields in examples of different trading scenarios; and details of the various validation measures the trade repositories will be asked to impose.

Timeline for implementation

We are concerned that the draft technical standards refer only to their entry into force on the twentieth day following their publication in the Official Journal. It will be essential that market

participants and the trade repositories are given sufficient time after that in which to develop, test and implement the necessary systems changes to deliver and receive/validate the new data fields - we have flagged in our comments below some of the key areas where significant development may be required and would urge ESMA to not underestimate the effort that will be required. Moreover, we hope that ESMA will heed our call to provide more comprehensive guidance and therefore would propose that revised obligations should not apply until a date that is not less than twelve months after the entry into force and six months from the publication of any guidance, whichever is the later.

Thank you again for the opportunity to comment on the proposals. Please do not hesitate to contact me at david.broadway@theinvestmentassociation.org or on +44 20 7269 4396 (direct line) should you wish to discuss anything raised in this letter.

Yours faithfully

David Broadway
Investment Operations Lead

2.2 Analysis

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 do not see any particular difficulty with the proposal to remover the "other" category in relation to the asset class.

However, there are many strategies that do not sit well within any of the current categories of contract type, and this unlikely to be resolved by extending the list. For this reason we do not support removal of the "other" category for contract type and believe this should be used for any contract that does not fit clearly within any of the other categories.

Moreover, we would urge ESMA to engage with industry to address any residual concerns it has with the ISDA taxonomy its application in determining a UPI that can be adopted at European level. Given such a solution for OTC derivatives beside the CFI code for exchange-traded derivatives, there would be no need at all for additional identification of the contact type and asset class.

We are also concerned that what appears to be a proposal to require both the contract type/asset class and the CFI for exchange-traded derivatives would lead to inconsistent results in some instances. For example, in the case of an exchange-traded contact for difference, the CFI would identify the product as a subset of the swap category, while the derivative type under the ESMA taxonomy shows swaps and contracts for difference as two distinct derivative types.

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.

We support ESMA's efforts to enhance the clarity of certain definitions. However, we believe the reference in the details of Field 3 of Table 1 (as described in the RTS) to it being filled from the perspective of the reporting counterparty remains ambiguous, while the meaning of "used in a consistent manner" is not clear. We would suggest that the text be redrafted to say:

> *"Unique code identifying the other counterparty, as seen from the perspective of the reporting counterparty. In the case of a private individual, the reporting counterparty should enter its own internal client code."*

Counterparty side (paragraph 25)

We agree that a solution is required to the challenge of contracts where there is no de facto buyer or seller. However, we do not believe the scenarios described in the new Article 3a in the proposed ITS are complete (eg. interest rate swaps where neither side pays a fixed rate). Furthermore, in some instances (eg. FX) the logic proposed is counterintuitive to normal market conventions and how such trades are confirmed between the counterparties. We would urge ESMA to work with the industry to resolve this issue.

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.

The Investment Association represents investment managers, who enter their clients into derivatives transactions - they value and account for those contracts to clients in accordance with recognised financial reporting standards. In the case of OTC contracts that are not centrally cleared, it is those valuations that are used for portfolio reconciliation with counterparties for the purposes of Article 1191)(b) of EMIR and we therefore believe, for such contracts, it is those valuations that should be reported to the trade repository.

Counterparties are required to use CCP valuations in their exposure reporting for cleared contracts, which may differ from those they use for their own accounting purpose. We believe this should be acknowledged explicitly in the RTS by way of a revision to the current Article 3(5), as follows:

> *"For contracts cleared by a CCP, the valuations reported shall be provided by the CCP rather than those prepared by the counterparty itself for accounting and other purposes."*

With regard to CCP valuations generally, we do not support the alternative suggestion in paragraph 23 to adopt a blanket replacement cost approach for all types of contract and, in particular, support FIA-Europe's response in this respect with regard to exchange-traded derivatives.

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.

We support the adaptations suggested, but with the following qualifications and exceptions:

Legal entity identifiers (paragraph 29)

We support the clear mandate to use the LEI for the identification of entities, but believe this should be backed up by a clarification that the relevant entities must have valid and current (ie. not lapsed) LEIs in order to participate in derivatives trading. This would be consistent with the proposal in the draft RTS for transaction reporting under MiFIR (see ESMA/2014/1570) that an investment firm should obtain their client's LEI before proving the investment service.

We also believe, however, that a counterparty should be responsible only for the maintenance of its own LEI - it should be able to rely a counterparty to do likewise and should not be obliged to check the validity of the LEI provided by them.

Corporate sector (paragraphs 30-31)

We do not agree that that corporate sector field should be extended to encompass the classification of NFCs. It is also not clear whether or not counterparties would be required to report all NACE categories within which they might fall, but in any event we do not believe it should be the role of reporting entities to provide reference data to regulators. Instead, we believe the current list should be extended beyond Financial Counterparty types only to

include "CCP" and a generic "NFC" classification, which would enable Field 8 of Table 1 to be removed.

If Field 8 is retained, we do not see any value in the "O" (other) category, given that all reporting counterparties must fall into one of the other categories.

Should ESMA proceed with the proposal to require corporate sector for NFCs, firms that trade and report on their behalf will need to time to collect that information.

Country of the other counterparty (paragraph 33)

We understand the concerns regarding the current approach, but are unclear as to why this information needs to be reported at all, when other entity information is not where it forms part of the data record supporting the LEI. The Trade Repositories will need to check an LEI database in order to validate an LEI, so would also be able to retrieve the country in which the other counterparty is established for the purposes of establishing whether or not there should be a matching report.

Original and actual notional (paragraph 34)

We do not agree with the proposal to add a new field for actual notional. We do not believe there is particular value in retaining the original notional in current reports (it will still be available from the archived data) and would recommend instead that further detail be provided concerning when and how the existing notional field should be updated in the light of an upsizing or downsizing of a position or due to lifecycle events.

Report tracking number (paragraph 36)

Our understanding of the proposed "report tracking number" field is that ESMA intends this to be used to link a chain of reports horizontally (eg. the contract between a CCP and clearing member and that between the clearing member and its client). This being the case, we would suggest a revised definition in the RTS as follows:

> *"A unique reference, assigned by a venue or CCP, for a chain of reports which relate to the same execution."*

To this end, we also believe it important that the RTS impose an obligation on the venue/CCP and each intermediate party in the chain to ensure that they are able to deliver the report tracking number to the next party both in a sufficiently timely manner to enable reporting and electronically in such a way that it can be consumed efficiently. Moreover, ESMA will need to allow time for market participants to develop the mechanisms they need to consume this information and, where necessary transmit it to the next party.

Interim taxonomy and UPI (paragraph 37)

As noted in our response to Question 1, we believe ESMA should engage with the industry to resolve any concerns it still has with the ISDA taxonomy for OTC derivatives and the UPI that that might be derived from it. ISDA and other trade bodies, including The Investment Association, are in collective discussion with IOSCO as part of its work, handed down by the FSB, to address the question of a "global" UPI - we would urge that the present interim taxonomy and "waterfall" approach leading to it be retained until that work is concluded.

Action type (paragraph 39)

We support the additional action type "R" for correction, but note that this has not been defined in the proposed RTS to clarify the circumstances in which it should be used.

Notwithstanding the addition of this new action type, some counterparties have embedded functionality to automatically generate and submit and "error" report followed by a corrected "new" where an error has been identified in the original report. We do not believe those counterparties should be required to abandon that functionality. Instead, they should have the option when correcting a previous report either to use the new "R" action type, or to remove and replace it using the "E" and "N" action types respectively. Consequently, we do not support the proposed revision to the definition of the "E" action type in the RTS (field 73) and suggest instead that it be amended as follows:

> *"a cancellation of wrongly submitted or incorrect report, in which case it will be identified as "error""*

We would suggest that in addition to the changes proposed so far, the term "cancel" and its action type "C" be amended to more accurately reflect its purpose. We suggest referring to the act of *termination*, with a code "T", instead.

We note the provision of an additional action type "P" to signify a new trade that will be rolled into a separate position. We would welcome clarification that the process ESMA intends for the future when reporting at position level (in contrast with the current Q&A TR17) would be:

(a) to report new trades that are to be compressed into a position using the action type "P" (rather than "N") in Field 73 and with the level (Field 74) as "T";

(b) to report new positions resulting from the compression of the trades in (a) using action type "N" and level "P";

(c) to report updated positions following the addition of further trades reported as in (a) using action type "M" and level "P".

Quantity/value field lengths

We recommend that ESMA ensures the lengths of these fields are consistent with comparable fields in other forms of transaction reporting, such as under MiFIR. We note, for example, that the quantity field (Field 22 of Table 2) allows up to 10 characters, whereas the proposed technical standards to support Article 26 of MiFIR indicate 20 characters for the same data.

Execution and confirmation timestamps

The format of the execution timestamp (Field 25 of Table 2) should not refer to UTC, which is not a valid reference in a formatting context. We recommend that the description in the RTS be extended instead to clarify that the time should be expressed in UTC.

Moreover, the systems of Investment Association members are generally not able to capture the actual time of execution, but typically either accept a time recorded manually by the trader according to when they have agreed the trade with the counterparty or otherwise timestamp the trade on entry to the system soon afterwards. It is therefore unlikely to match exactly the time recorded by the counterparty. We would urge that the RTS recognise specifically that the two counterparties' timestamps may differ within a reasonable tolerance.

With regard to confirmations (Field 33 of Table 2), we do not believe the time within the day is critical and again is likely to be viewed differently by each counterparty. We would therefore suggest that only the date should need to be reported.

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.

Country of the other counterparty (paragraph 45)

As noted in our response to Question 4 (in relation to paragraph 33), we are unclear as to why this information needs to be reported at all, when other entity information is not where it forms part of the data record supporting the LEI. The Trade Repositories will need to check an LEI database in order to validate an LEI, so would also be able to retrieve the country in which the other counterparty is established for the purposes of establishing whether or not there should be a matching report.

Original and actual notional (paragraph 51)

As noted in our response to Question 4 (in relation to paragraph 34), we do not agree with the proposal to add a new field for actual notional. We do not believe there is particular value in retaining the original notional in current reports (it will still be available from the archived data) and would recommend instead that further detail be provided concerning when and how the existing notional field should be updated in the light of an upsizing or downsizing of a position or due to lifecycle events.

Margin/collateral reporting (paragraphs 52-54)

The changes to the reporting of collateral will require considerable changes to firms' systems in order to separate the different the various amounts. In particular, we would ask ESMA to clarify the wide motivation for gathering data on collateral - is it to assess how fully derivatives contracts are collateralised/margined or to understand counterparties' collateral exposures. We are aware, for example, that there are instances where collateral may be netted across a portfolio of derivatives and non-derivatives transactions, in which case would ESMA expect only the collateral relating to derivatives to be reported, even though the *actual* movement of collateral may be in the opposite direction due to the non-derivatives positions between the counterparties?

We are also aware that some counterparties net initial and variation margin and will not easily be able to separate these in their systems. We do not believe it would be proportionate to required them to alter their systems architecture just in order to satisfy these a new reporting requirements and therefore would ask for two additional fields (for margin delivered and received) to be used instead of the four proposed fields in cases where the initial and variation margins are netted.

In any event the need to report margin that is both delivered and received raises again the question of ESMA's expectations as to when during the transfer process should it be reported - for example, the delivering party might report when it has instructed a transfer, while the receiving party might report only when receipt is confirmed, in which case the data available to regulators for any given day may appear to be inconsistent.

We would emphasise that the impact of the proposed new approach on firms' systems will be considerable and for some undoubtedly will go beyond their reporting functionality into their core systems. As such ESMA must understand that they will require considerable lead times to develop and implement the necessary changes once the new requirements are finalised.

UTI (paragraph 55)

We believe the new Article 4a(2)(d) in the proposed ITS should also address certain situations where both counterparties are Financial Counterparties; in particular where one is a sell-side bank and the other a buy-side client such as a pension scheme or investment fund, when the bank would normally expect to generate the UTI. More importantly, we believe the proposed Article 4a should be extended to include an obligation on the generating party to deliver the UTI to the other party both in a sufficiently timely manner to enable reporting and electronically in such a way that it can be consumed efficiently.

Table 2, field 31?

We note that the field numbers in Table 2 jump from 30 to 32. Please would ESMA confirm that there was no intention to include a new field that is not shown in the consultation paper and which respondents have therefore not had an opportunity to consider.

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

We agree with ability to report negative values in the fields as proposed by ESMA in the draft ITS.

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.

As per our response to Question 4, we do not agree that that corporate sector field should be extended to encompass the classification of NFCs , as we do not believe it should be the role of reporting entities to provide reference data to regulators.

An alternative approach, albeit on that might require support from other regulators globally, would be to require corporate classifications to be captured as part of the data associated with an entity's LEI. That said, the LEI is intended to provide only the unique identification of an entity, and as such the associated data record should be limited to attributes that are be useful to distinguish between different entities with similar names - it is highly questionable whether or not information concerning an entity's corporate sector would be of value in this respect.

As we noted in our response to Question 4, should ESMA proceed with the proposal to require corporate sector for NFCs, firms that trade and report on their behalf will need to time to collect that information.

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.

We note the reference in paragraph to alignment with the MiFIR transaction reporting requirements, but do not agree that such alignment is necessary or, indeed, appropriate. It has often been observed (including by ESMA itself) that the objectives of the reporting regimes under MiFID/MiFIR and EMIR are quite different - while understanding of the composition of a basket may be relevant to regulators in the context of market abuse (MiFIR), we do not believe the information would be of particular value to the analysis of risk in the financial system (EMIR).

We therefore do not believe the development that firms would need to undertake to report this information to a trade repository under EMIR would be justified.

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.

We welcome the proposal for an additional section to address the specificities of credit derivatives. We would note, however, that coupons may not always be fixed and suggest that ESMA clarifies in the technical standards how it anticipates field 69 of Table 2 should be filled in such cases.

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?

A key issue to consider when thinking about allowing flexibility for counterparties to either submit a single report or report the individual component trades is that as long as both counterparties to a transaction are obliged to submit matching reports, both will need to report in the same way.

We understand that Investment Association members typically capture and report the individual components and would not therefore benefit from the ability to submit a single report. Indeed, we would suggest that, when a strategy involves a combination of trades, the strategy itself should be of secondary concern and the focus should be on the exposures created by the underlying trades. Moreover, even where the strategy has a market price, that must have been derived from data relating to the individual trades.

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:

- 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;

- 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;

- 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;

- 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.

Please elaborate.

In response to Question 4, we recommended that a single field for notional be retained and that further detail be provided concerning when and how the existing notional field should be updated in the light of an upsizing or downsizing of a position or due to lifecycle events.

In that light, we have few issues with the principles described above although we believe the third description is ambiguous due to the term "end of day settlement price", given the specific context in which is proposed. We would suggest that it refers instead simply to the "end of day price" in order to avoid confusion with the eventual settlement on termination.