

**Jonathan Faull
Director-General
DG Markt
European Commission**

Ref: Reporting to Trade Repositories – the case of ETDs

Dear Mr. Faull,

On behalf of the ESMA Chair, I am writing to you to ask the Commission to consider the enclosed amended ITS in order to allow for a later start date for reporting of exchange traded derivatives trades to Trade Repositories (TRs). ESMA is proposing this amendment on the basis of its mandate under Article 9 of EMIR to develop draft ITS.

ESMA delivered its Final Report on EMIR technical standards on 27 September 2012 (ESMA document 2012/600). The RTS supplementing EMIR were published in the Official Journal of the EU (OJEU) on 23 February 2013 and entered into force on 15 March 2013. The ITS were published in the OJEU on 21 December 2012 and entered into force on 10 January, although with effect from 15 March 2013 as well, since they depend on the RTS.

At present ESMA is working on ensuring the consistent application of EMIR and its RTS and ITS. The implementation work provided evidence to ESMA of the complexity of reporting of trades subject to the rules of a trading venue and executed in compliance with those rules, including the processing by the trading venue after execution and the clearing by a CCP within one



working day of execution. These derivative contracts are further referred to as exchange-traded derivatives (ETDs, hereinafter).

The current reporting start dates to TRs contained in the ITS do not distinguish the methods of trading (ETDs v OTC). Such specification would in our view be necessary as there is otherwise a material risk that reporting of ETDs is not harmonised. Therefore there is a need for further guidance to be issued. Without further guidance, ETD reporting would not be consistent, and would not serve the purposes for which it was conceived.

In this respect, ESMA proposes to develop further guidance through guidelines and to provide sufficient time for stakeholders to implement them. ESMA believes the guidelines are needed for a variety of reasons that are described in the attached Report, including to clearly identify the counterparties of ETDs and to achieve consistent application of reporting requirements under EMIR and MiFID, to the extent possible.

ESMA therefore suggests rescheduling the reporting start date for ETDs to January 2015, rather than the current foreseen date of January 2014. To formalise such a rescheduling of the reporting start date, an amendment to the existing ITS is required and draft technical standards together with the formal Report are attached in this regard, for your consideration.

The attached report contains further background and technical details but I wanted to highlight that ahead of the guidance itself, ESMA does not propose to define ETDs as such.

Finally I would like to underline the urgency of this matter. Having in mind the currently foreseen reporting start date (January 2014), and the legislative amendment process and timeline, we have drafted these technical standards as a matter of urgency, in order for the Commission to



be able to consider them as quickly as possible, so that it will still be feasible to change the reporting start date ahead of the winter break. This also explains why we could not consult widely, although we did perform a cost-benefit analysis, attached in the Report for your perusal.

I trust that you will agree with our reasoning and the need for further work on ETDs and that the reporting obligation for products traded in such a way should not start before further clarity on who should report in many of the possible complex scenarios. I therefore hope that you will positively consider an endorsement of the proposed draft implementing technical standards. Feel free to contact me should you have any queries on the attached; your staff may also contact Frederico Alcântara, at frederico.alcantara@esma.europa.eu, for further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Verena Ross', written in a cursive style.

Verena Ross
Executive Director
European Securities and Markets Authority