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| **Consultation Paper** |
| **Review of the technical standards on reporting under Article 9 of EMIR** |

**RESPONSE FROM STATOIL ASA**

***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.***

**Statoil response to Q1:**

We would recommend that clarification should be added to explain how to classify derivatives that use commodity infrastructure as an underlier. We assume that they would be classified as "commodity" using Article 4 (3)(a) and that this would include transportation, virtual storage and similar capacity and synthetic capacity-based derivatives. Similarly, we would recommend that additional clarification should be added to explain how commodity derivatives should be classified under Article 4(3)(b) when one party has embedded optionality to change eg delivery point or pricing or underlying volume. One approach could be to decompose (by both parties) such contracts into "baseload", "swap" and "swing" components with the baseload component classified as "forward" while the swing component would be classified as "option" (and swap component as swap) using Article 4 (3)(b). However, such an approach would have to include a mechanism to link the components that have been decomposed and to ensure that both parties have decomposed into the same components. If these scenarios can be addressed through further clarifications, then it should be possible to remove the "other" classifications in both Article 4 (3) a and Article 4(3)(b).

However, we also refer you to your question 10 where you discuss the challenges in decomposing other contractual structures (eg straddles) and our proposal to address this issue. For structures traded on trading venues, it should be possible for the venue to define a standard decomposition to ensure both parties take the same approach. The transaction reference number ("TRN", current Table 2 Field 9) could be used to link the components, with the venue allocating the TRN for structures executed on that venue. However, for OTC derivative structures that are not equivalent to structures tradable on a venue, decomposition and TRN will be by mutual agreement between the parties or (if no agreement) decided by the seller. OTC structures will therefore be challenging to report within timescale.

***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.***

**Statoil response to Q2:**

Para 17. Counterparty ID field. There are two entities to the transaction: the "Party" (me) and my "Counterparty" (them). Both Party and Counterparty can choose to report their transaction themselves or delegate that role to a "Report submitting entity". We believe that it is confusing to refer to yourself as a counter party and that it can be confusing to refer to yourself as the reporting entity if you have delegated reporting responsibility to someone else. We would therefore recommend consistent use of the terms: “party” when referring to the party responsible for the transaction report; “counterparty” when referring to the other party to the transaction and finally to refer to the party submitting the transaction report to the trade repository as the “Report submitting entity”.

Para 18. Fields 17 to 20 (Table 1 Counterparty Data). We do not support separate fields for Valuation Date and Valuation time. Valuation time is a confusing addition as it is unclear if it refers to the start or end of a pricing window, market close, the time when reference prices are published or the time when one party to the transaction updates a valuation model. There are clearly scenarios when a Valuation Time field cannot be matched and the benefit as an unmatched field is not obvious. We therefore recommend that this proposed extra field is not included in the published version.

Para 19. Fields 52 & 53. This is better aligned to REMIT descriptions/use of similar fields and therefore a welcome change.

Para 20. Article 4(3) (c); see answer to Q1 on use of the "other" category. Requiring both transaction parties to agree how complex derivatives are decomposed into components that match the remaining categories will delay reporting. Such an approach would have to include a mechanism to link the components that have been decomposed and to ensure that both parties have decomposed into the same components. For structures traded on trading venues, it should be possible for the venue to define a standard decomposition to ensure both parties take the same approach. The transaction reference number ("TRN", current Table 2 Field 9) could be used to link the components, with the venue allocating the TRN for structures executed on that venue. However, for OTC derivative structures that are not equivalent to structures tradable on a venue, decomposition and TRN will be by mutual agreement between the parties or (if no agreement) decided by the seller. OTC structures will therefore be challenging to report within timescale.

Para 21 - 23. Field 17 We support clarifications on how the mark to market value should be calculated and reported.

***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.***

**Statoil response to Q3:**

This is not applicable to NFC-.

***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.***

**Statoil response to Q4:**

Para 29. No strong objection to the removal of the alternatives to LEI, however we can see circumstances in which an alternative may be required as an interim measure. Therefore allowing BIC codes to be used on a temporary basis may be a good idea.

Para 30 - 32. Table 1, Field 6 & 7: If current field 6 (Corporate sector of Counterparty) taxonomy is extended to include: a letter designating NFC and a further letter designating CCP, then current field 7 (Financial or non-financial nature of counterparty) would not be required.

Para 33. Current Table 1, Field 14: We do not support removing the non-EEA flag from the table of fields. It should be possible for a company resident in a country that has not yet implemented EMIR to choose to participate in transaction matching on a voluntary basis. As such companies are charged the same Trade Repository (TR) fees as a within-scope company, the choice to include an out-of-scope company in matching should be made by the out-of-scope company and not by the TR. As an out-of-scope company, the existing “non-EEA” field enables us to voluntarily participate (and have our transaction data matched) by asking our counterparties to indicate “N” in this field. Our counterparties have been willing to cooperate with this approach as it improves the robustness of their own transaction submission.

Without the ability to ensure that transactions are matched by a TR, there is no benefit for an out-of-scope company (resident in a country that has not yet adapted EMIR) to continue to voluntarily participate in EMIR transaction reporting. The withdrawal of out-of-scope companies from the matching process will reduce the reliability of transaction data submitted by their in-scope counterparties and will reduce the overall effectiveness of the TR matching process.

Para 34. Current Table 2, Field 14: We do not support the proposal to add an additional field to report both Notional and an amended notional value termed "Actual notional". An amendment to contractual terms should be reported as Action: Modify and the amended notional amount should be reported in existing Table 2 field 14. We do not believe that reporting original value for any field along with amended value for each modification would add clarity and this practice would cause confusion when more than one transaction modification of the same field occurs during a contract life cycle. UTI should be used to link modifications to the original reported value for all fields.

Para 35 - 40. Table 2, Fields 2, 9, 36 and 37: We urge ESMA to align definitions, taxonomies and interpretations for reporting fields with the REMIT equivalents. Although there are already steps to avoid duplicative reporting, aligned approaches / interpretations will reduce the administrative burden by simplifying IT systems for regulatory reporting

Para 41. New Action type "R": We support this initiative

***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.***

**Statoil response to Q5:**

We would prefer this update to focus on clearer explanations, better aligned with REMIT reporting requirements on how fields should be populated, clarifying which fields must be populated by FC and/or NFC+ and/or NFC- and clarifying, for each participant classification, when fields can be blank or N/A. Adding additional fields without improvements in alignment and clarifications will increase the risk of misinterpretation.

We would also urge ESMA to remove the requirement for NFC- to populate Table 1, field 15 (Directly linked to commercial activity or treasury financing) when the transaction is an Exchange Traded Derivative (ETD). It is common for NFC- to be clients to exchange members. Exchange members acting on behalf of clients do not have the information to populate this field and are unable to facilitate transaction enrichment by clients to populate this field. Clients are unable to self-report ETDs as they cannot replicate the position reporting structure used by exchange members to report position, rather than individual transactions, with their client. The rationale under EMIR for NFC- to populate this field for ETDs is not obvious as ETDs are excluded from Clearing Threshold calculation.

We would also request that ESMA clarify what information is to be sent when a transaction is modified:

* UTI plus new values for fields that have changed plus Action type: modify or
* UTI plus all fields populated, including changed values, plus Action type: modify.

TRs are currently split on their chosen approaches but configuring trading systems to handle both approaches creates a significant and unnecessary burden on market participants.

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

**Statoil response to Q6:**

We assume this question relates to paragraph 44 and not paragraph 40 as indicated.

We have no issues in principle with negative values being reported as long as their use to populate identified fields, has a single specified meaning in clearly specified scenarios and use of negative values within these specified scenarios is mandatory.

***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.***

**Statoil response to Q7:**

We assume this question relates to paragraph 46 and not paragraph 42 as indicated.

We refer to our response to Q4. Current Table 1, Field 6 & 7: If current field 6 (Corporate sector of Counterparty) taxonomy is extended to include: a letter designating NFC and a further letter designating CCP, then current field 7 (Financial or non-financial nature of counterparty) would not be required. We do not support use of REGULATION (EC) No 1893/2006 to populate the corporate sector for non-financials as this taxonomy does not have a single Division, Group or Class to capture a vertically integrated companies – for example Natural Gas extraction (Mining and Quarrying) is in a separate division to Manufacture (distribution and trade) of Natural Gas.

***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.***

**Statoil response to Q8:**

We assume this question relates to paragraph 49 and not paragraph 45 as indicated.

We would urge ESMA to align any reporting change with REMIT implementing regulation (EU)1348/2014, Annex Table 2, Field numbers 15 to 30. The obligation to report similar transactions under either REMIT or EMIR can be decided based on arbitrary criteria like the venue of execution or the ability to physically deliver. Therefore, transaction systems must accommodate reporting of similar transactions under either EMIR or REMIT. It would therefore reduce the administrative burden if definitions and interpretations of reporting fields were aligned between the regulations.

***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.***

**Statoil response to Q9:**

No comment.

***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?***

**Statoil response to Q10:**

We refer to our answer to Q1. and the general issue of decomposing derivative structures and the proposal to remove the derivative class "other". Any process to decompose structures into components (by both parties) must include a mechanism to link the components that have been decomposed and to ensure that both parties have decomposed into the same components. For structures traded on trading venues, it should be possible for the venue to define a standard decomposition to ensure both parties take the same approach. The transaction reference number ("TRN", current Table 2 Field 9) could be used to link the components, with the venue allocating the TRN for structures executed on that venue. However, for OTC derivative structures that are not equivalent to structures tradable on a venue, decomposition and TRN will be by mutual agreement between the parties or (if no agreement) decided by the seller. OTC structures will therefore be challenging to report within timescale.

***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:***

**Statoil response to Q11:**

We do not have an issue with the proposals. We would however like to stress the importance of the notional field to be reported being clearly specified along with basis for deriving the field value.

Para 56: If, for commodity forwards and commodity futures, the notional calculation should be as follows: contract lots multiplied by volume per lot multiplied by contract price, then we support this

Para 57: If for commodity derivatives that are forwards or futures, the notional calculation should be as follows: contract lots multiplied by volume per lot multiplied by contract price, then we support this. If for options on commodities, this means underlying volume assuming option is exercised multiplied by option strike price, then we support this

Para 58: We have no issues in principal with this approach. However there should not be the possibility of multiple pricing for the product.

Para 59: For commodities, this approach should be limited to scenarios where the notional can vary due to characteristics that can be modelled. This approach will not work if the notional varies due to characteristics that cannot be modelled (e.g. variation in consumption due to unpredictable changes in a manufacturing process)- in such scenarios, the notional value should reflect the minimum value in a possible range of values.