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European Securities and Markets Authority
103 Rue de Grenelle
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13 February 2015

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

Dear Sir/Madam,

UBS would like to thank ESMA for the opportunity to comment on the Consultation Paper on the Review of the technical standards on reporting under Article 9 of EMIR. Please find attached our response to the consultation.

We would be happy to discuss with you any comments you may have. Please do not hesitate to contact Andrew Bell on +44 20 7568 1385.

Yours sincerely,
UBS AG

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UBS response to the ESMA Consultation Paper on the review of the technical standards on reporting under Article 9 of EMIR

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.

Yes, we do envisage difficulties with removing the "other" category from the derivative type and class descriptions and we would support the retention of this category.

The majority of derivative contracts are capable of being assigned to a specific category class and type and we believe it is appropriate that counterparties should assign a contract to a specific category wherever possible. However, many structured and exotic contracts do not fit neatly within a specific category type and for such contracts we believe the "other" category type serves a valuable purpose and should be retained. Removing the "other" category type will force counterparties to assign contracts that do not fit within a single derivative type (e.g. a product with features of both a swap and option) into a single category which could be misleading. In respect of contracts involving baskets of underliers from different asset classes, the same issues may also arise when assigning the contract to a derivative class meaning the "other" category should be preserved for the asset class description as well.

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.

UBS generally agrees with the clarifications introduced. However, we note the following issues:

- With regard to the proposal in paragraph 25 of the consultation paper to provide a more comprehensive description of the buy/sell indicator, we note that ESMA Q&A TR 24 (in the ESMA Q&A dated 24 October 2014) sets out an approach to identify who is the "buyer" and who is the "seller" on an FX forward or an FX swap where the two counterparties are exchanging currencies, and are therefore both a buyer and seller at the same time. But we do not consider the concept of a buy/sell indicator to be appropriate for FX Swaps and FX forwards and we have concerns with the operation of this approach in practice. We are of the view that existing data that is reported under the 'Payer/Receiver' fields sufficiently describes the FX Swap and FX Forward financial instruments.
- We support the inclusion of the text on Blocks and Allocations in ESMA Q&A 39 which makes a distinction between (i) scenarios where the block trade was concluded by an

investment firm and then allocated to clients and (ii) those scenarios where the block trade was concluded by a fund manager without own reporting obligation and then allocated to individual funds. We also consider it appropriate to align the EMIR requirements for block trade reporting by fund managers with the relevant requirements in other jurisdictions (e.g. in the US under Dodd Frank).

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.

We support the statement in paragraph 23 of the consultation paper that "*It is also proposed to recognise market practice in how different types of derivative contracts are valued and to allow for more than one way of calculating the mark to market value depending on the type of derivative contract*".

We are however concerned that the proposed methodologies in paragraphs 21 – 23 of the consultation paper may be overly restrictive and require certain segments of the market to fundamentally change their valuation approach. We consider it appropriate to allow for flexibility in the valuation approach in order to reflect the differences in valuation methodologies that different counterparty types employ for other valuation purposes such as valuation reporting to clients.

For example, we understand that two different methods of expressing the mark-to-market valuation of exchange traded derivative (ETD) options are currently common in the market:

- Market Value: Quantity * Today Settlement Price * Multiplier
- Open Trade Equity (OTE): (Today Settlement Price – Trade Price) * Quantity * Multiplier

Requiring firms to adopt a different valuation methodology for EMIR purposes to that which they use for reporting to clients (based on relevant accounting standards) is likely to create unnecessary complexity and confusion. The valuation of derivative positions is already performed where appropriate in accordance with the Fair Value principles defined in IFRS13. In our view, rather than trying to introduce a prescriptive valuation methodology (or methodologies), it would be more appropriate to allow for flexibility to use different valuation methodologies with any concerns around discrepancies in mark to market valuations addressed via the EMIR portfolio reconciliation process.

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.

Action types: We believe further clarity is required regarding the proposals in paragraphs 39 – 41 of the consultation paper on changes to the "Action Type" field for reporting of corrections. We believe there is some uncertainty as to which action types would apply in what circumstances and it's crucial that ESMA provides additional detail so all market participants have a consistent understanding.

We also highlight that currently, required lifecycle events are being reported in line with the TR specification, which may not align fully with the Action Types as defined by ESMA. Change will similarly have to be implemented by the TRs to ensure counterparties are capable of reporting the lifecycle events as envisaged by the Level 1 text. In light of this, counterparties would be reliant on updating internal systems only once an updated TR specification has been released. Additionally, the sequence of reports that is expected (i.e. only 1 N followed by 1…many M) will have a significant impact on front to back flows and would require significant rework to comply.

As an example, we would require further clarity as to how the "Cancel" and "Amend" functionality will work, in particular for transactions reported prior to this change coming into force. "Cancel" is defined in the Level 1 text as "a termination of an existing contract" and this is further clarified in ESMA's Q&As dated 24 October 2014. But the use of the term "cancel", as proposed in paragraph 40 of the consultation paper, could be interpreted as meaning that something has been reported in error. We believe it may be more appropriate to include an action type to capture the termination/maturity of a contract more accurately, such as "Full Termination/Maturity".

We believe it would be appropriate to introduce a new action type for migrating trades and positions between TRs. Currently it is necessary to identify open trades as action type error ("E") in the old TR and reload them as new ("N") at the new TR. But it would be better in terms of transparency to be able to set an action type for migration out and in of a TR, where in consequence the UTI does not change in order to not affect the counterparty. The current approach, which requires the identification of a correctly reported transaction with action type "Error" in order to move it, is basically a technical workaround and in our view is a misrepresentation of the actual event.

LEIs: UBS is concerned with the proposals in paragraph 29 of the consultation paper to remove the ability to use BICs or Interim Entity Identifiers at this time. We support the use of a global identifier but currently there remain counterparties who do not have a reporting obligation

under EMIR, or an obligation to obtain an LEI. These include EMIR Article 1 (4) counterparties and counterparties located in other jurisdictions which do not require an LEI, including in those jurisdictions that have implemented similar requirements but rely on the use of a BIC for identification purposes. For non-EEA counterparties we would request the continued use of an alternative identifier, including a BIC or a business registry number, until the non-EU jurisdiction of that counterparty mandates the use of LEIs.

We also propose that it is clarified for which fields an LEI should be used (e.g. "Name of reporting counterparty, "Country of the counterparty", "Domicile of the reporting counterparty", "Broker ID/Beneficiary ID/Clearing Member ID etc).

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.

Collateral reporting: Whilst in general we consider the spirit of the proposals put forward in paragraphs 52-54 to be appropriate, there are practical and interpretative difficulties, particularly for portfolio margined derivative positions. For ETDs, clients can have excess cash/non cash that covers all their IM and negative VM obligations. To just represent IM and VM 'posted' and 'received' would in our view overstate the nature of the 'exposure'. We would encourage ESMA to consider the further detail on this issue set out in the FIA Europe response to this consultation.

We also take the opportunity to highlight below some concerns that are specific to the Wealth Management / Private Banking (WM/PB) industry.

The one-size-fits-all EMIR reporting approach does not reflect systemic risk: EMIR in general, and the current reporting RTS in particular, has a focus primarily geared towards investment bank (broker) type clients who, due to the size of executed financial transactions and nature of risk management techniques (which often includes un-hedged derivative positions), pose a higher systemic risk to the derivatives market.

The WM/PB industry operates under a fundamentally different business model, where the investment strategies of clients are primarily focused towards mitigating risk, hence derivative transactions entered into are primarily done so to hedge any residual exposure.

In our view, the current EMIR requirements do not sufficiently distinguish between differing investment strategies and types of clients, and essentially apply a one-size-fits-all approach to all market participants, regardless of the risks posed to the financial system.

We believe a more differentiated approach should be considered for the EMIR reporting regime to recognize that certain types of financial counterparty pose less systemic risk than others and which calibrates reporting obligations accordingly. This would complement risk based approaches being contemplated within EMIR with regard to (i) the proposed phase-in of the non-cleared derivative margining rules by volume of OTC derivatives (as set out in the joint ESAs consultation on Draft regulatory technical standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012) and (ii) the proposed delay of the clearing frontloading start date for Category 2 financial counterparties (as proposed in the European Commission's letter to ESMA of 18 December 2014).

We believe that financial counterparties posing less risk, typically including WMs/PBs, should be subject to streamlined reporting requirements such as being exempt from reporting collateral or valuations.

Collateral reporting from a WM/PB perspective: The fundamental differences in the investment strategies of investment banks versus WM/PB clients are also reflected in the model for managing collateral of WM / PB clients.

The key distinguishing characteristic of collateral management within WM/PB is that clients primarily use pledged portfolios in order to collateralize their exposure. These pledges usually apply to a portfolio covering cash, bonds and equities, and are used to cover exposure derived not only from OTC and ETD transactions, but also for non-EMIR relevant obligations like Lombard loans, guarantees, other covered instruments and even client's fees for bank services. The client has the liberty to trade all financial instruments so long as the value of the portfolio exceeds the calculated lending value which is necessary to cover the entire (EMIR and non-EMIR relevant) exposures.

Additionally, WM/PB firms do not segregate collateral accounts with title transfers as is standard practice with IB clients. Whilst the relevant initial and variation margin requirements for each derivative trade or position is known, WM/PB firms typically do not have a segregated collateral account exclusively covering it, rather one which also serves as collateral for other outstanding liabilities. This approach is consistent with article 16(10) of MiFID II which specifically states that investment firms shall not conclude title transfer financial collateral arrangements with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients.

Whilst the above approach does not pose an issue in terms of managing risk within WM in practice, it is a challenge to report the received variation and initial margin in a precise way as proposed by ESMA in paragraphs 52 – 53 of the consultation paper for the following reasons:

1) the pledged assets also serve as collateral for non-EMIR relevant exposures, and

2) there are no preferential liquidation rules which guarantee that derivatives, in priority to other outstanding liabilities, are covered first by the proceeds of the pledged assets in case of a shortfall.

ESMA did not clearly specify in its regulation how clients collateralizing their ETD/OTC exposure via pledged portfolios should be treated in terms of reporting. From a WM/PB perspective, we would therefore appreciate more guidance and clarity about the handling of pledged portfolios in order to have an equal playing field throughout Europe in which collateral values reported to ESMA are calculated in a consistent manner (otherwise the reported collateral values are not comparable and therefore are only of very limited informational value).

The current approach to collateral reporting of pledged portfolios is either to report the total value of the portfolio or a partial value in proportion of the derivatives exposure compared to the total collateralized proportion. We understand that there is no common approach in the industry how to calculate the collateral values out of pledged portfolios.

We therefore propose the following solution which might better reflect the specific circumstances of the WM industry:

1) Introduce a field which indicates if collateral is held as "Title Transfer" or "Pledged Portfolio" and

2) Introduce a field which indicates if the pledged portfolio is sufficiently funded to cover the sum of all clients' exposure (i.e. EMIR and non-EMIR relevant exposure) (Yes/No value). In case of a "Yes", the market value of the collateral is covering 100% of the required initial and variation margin.

Unique trade identifier: We support the introduction of a UTI generator tie-breaker logic as proposed in paragraph 55 of the consultation paper and believe this could be further supported by an additional field to identify the Generating Party.

More generally, we consider that the current EMIR approach, by which a UTI needs to be generated and agreed between the counterparties in advance of the initial report, has not proved very effective, as evidenced by a low matching rate at the TRs. Currently there are very different approaches in the industry as to how a UTI is built and communicated (e.g. Swift, fax, mail, etc.) and we consider it important that steps are taken to ensure greater consistency in outcomes.

We propose that the issue could be addressed in one of the following ways:

i) Recognition that UTIs may be agreed as part of the confirmation of the trade, and therefore should be generated and reported where agreed between the counterparties within the appropriate confirmation timeframe prescribed by EMIR; or,

ii) UTI generation completed by the TRs who would assign a UTI once the trade has been matched. This could work as follows:

1. Both counterparties and/or the third party platform where the trade is electronically confirmed send the trade report to the TR, including their own reference identification and leave the common UTI field blank.

2. The TRs match the trade based on certain data like counterparty LEI/alternative ID, product ID/ISIN, amount, currency, value date, maturity date, etc., and in the case of 1 sided reporting (where the counterparty is located outside the EU), this will be identified via the "Country of the other counterparty".

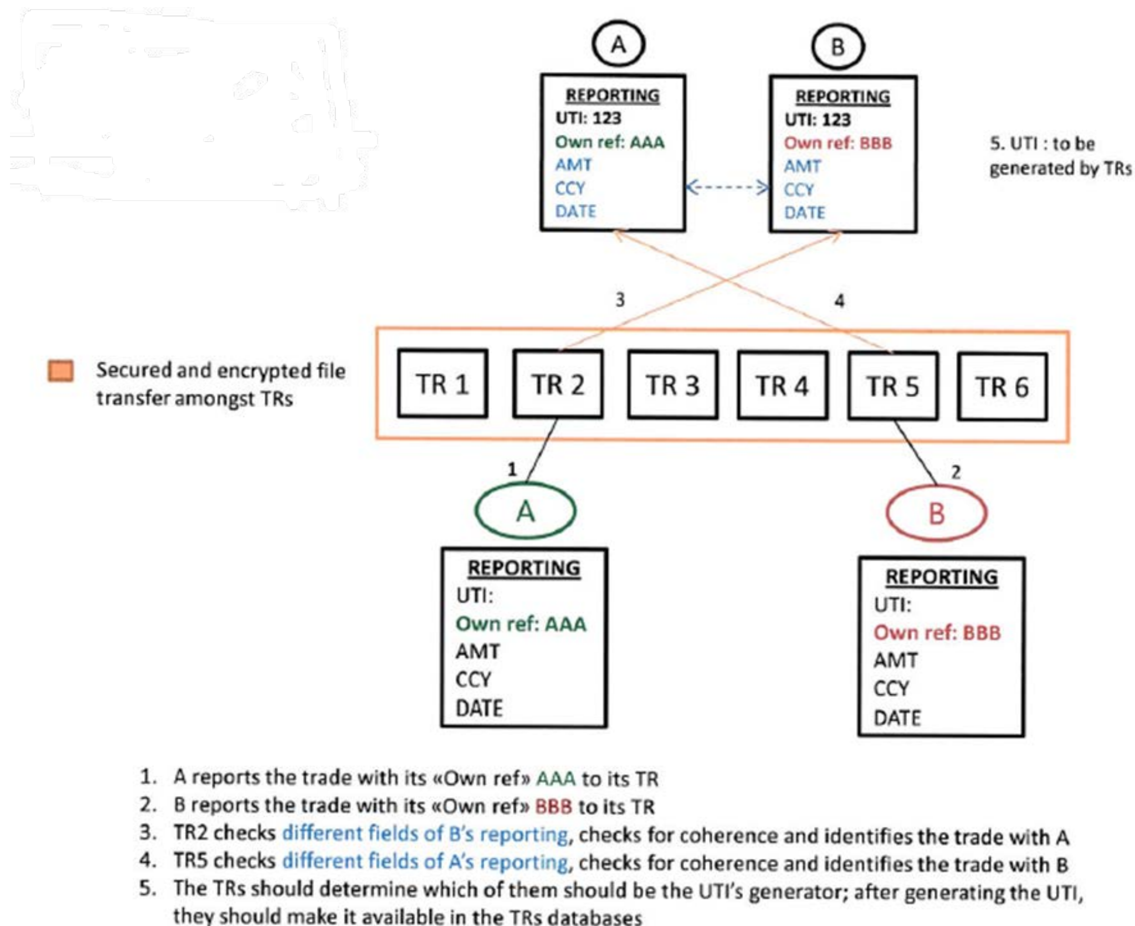
3. Once the matching pair is found, the TR assigns the UTI to both reports and communicates to the counterparties who may then use it for reporting subsequent lifecycle events.

There are several advantages to this approach:

- Exchanges of data flows between TRs are already set up in encrypted form.
- This practice would prevent the thousands of parties involved from implementing solutions and the impact could be restricted to the registered TRs.
- The TRs already act as centralizing agents and exchange reports securely.
- The risk of low-volume entities such as NFC-s (that manually add the UTI to their files) submitting incorrect reports due to human error when manually encoding data will be eliminated.
- A standard UTI build is easily introduced and maintained in the industry.
- The UTI matching rate should increase.

We recognize that such an approach could be operationally challenging for high frequency trading giving the difficulty in matching many trades of similar clip size that are executed at the same time. This issue could be addressed by providing for an override where it is possible for the counterparties to the trade to provide the UTI in advance where available.

A summary of this approach is set out below:



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

We are of the view that all numerical fields should allow negative values.

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.

We believe it may often be difficult to identify the corporate sector of non-financials. We propose that the identification of corporate sector could be included in the LEI.

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.

Yes, we believe that there could be several difficulties. Firstly, we believe it will be very difficult to achieve matching of the underlying field between counterparties when, for example, one counterparty may report the ISINs of the components of a basket in a different order to its

counterparty and given that will be multiple new pieces of information that may be in different formats. Secondly, we note that much of the information required will typically not be available on current systems in the format required for reporting and a requirement to provide this information would require significant systems build.

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.

As an alternative to the proposed details to be reported, we propose that it should be adequate to report credit derivatives using a RED ID.

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?

We highlight that the FPML standard does not currently support the functionality for strategies to be reported directly as single reports. UBS's booking systems do not hold structures as a single leg so it would be significant change to do this. Introducing the possibility for single reports on a non-mandatory basis, allowing for the flexibility of reporting both as a single or multiple legs, would be acceptable.

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.

We believe further analysis of how Notional is currently calculated across the industry would be necessary. In particular, at what point does ESMA think notional should be calculated; at inception or at the end? For FX, we recommend that as contractual payments for Currency Options are derived from the original notional, rather than an underlying asset, it would be more appropriate to add 'Currency Options' to paragraph 56 rather than the inference that these would be included in paragraph 57. It is unclear at which point the two new fields "Original" and "Actual" should be calculated in the trade lifecycle and we would appreciate clarification of this point.