



European Securities and
Markets Authority

The Chair

14 November 2013
ESMA/2013/1655

**Mr Jonathan Faull
Director General
Internal Market and
Services
European Commission
1049 Brussels
Belgium**

Re: European Commission's intention to decline ETD postponement

~~Dear Mr Faull,~~

DEAR JONATHAN,

I acknowledge receipt of your letter of 7 November 2013 in which you inform ESMA of the intention of the European Commission to reject the draft implementing technical standard submitted by ESMA on 7 August 2013 amending the Commission Implementing Regulation (EU) 1247/2012 by postponing the reporting start date for exchange traded derivatives (ETD).

After analysing carefully your reasons for the intended rejection, we still consider that the definition of the reporting rules for exchange traded derivatives requires considerable technical guidance and adaptation that would benefit from a delay of the start reporting date.

Please remain assured of the strong interest of securities regulators in, and their commitment to, monitoring financial stability using accurate data. Precisely for that reason, we do not think that this delay would affect the objectives of EMIR in terms of systemic risk monitoring. Regulators have already daily access to transactions executed in regulated markets and positions held at CCPs, which currently clear all ETD transactions. We consider that allowing the reporting to start before appropriate and comprehensive guidance has been provided and before all reporting counterparties, trade repositories and competent authorities (as users of the data) have had sufficient time to incorporate that guidance in their systems, will diminish the quality of the data and could cause imprecise or faulty reporting, which is a cause of concern for all regulators. It was mainly the integrity and accuracy of the data, and not the costs for market participants that drove ESMA's proposal to allow for more time to develop guidance for the reporting obligation.



In your letter you are considering that each party intervening in an ETD is a counterparty of such transaction and you imply that this will bring clarity to the reporting obligations. This is, indeed, one of the approaches that ESMA is already considering for its guidance, but it is not evident that a clearing arrangement between a counterparty and a clearing firm for the clearing of transactions on behalf of the counterparty is actually a different transaction from the original one. Even in this case, there are multiple scenarios that require precise guidance on how to populate the reports for ETDs to ensure accurate reporting.

Your letter also refers to EMIR reporting being for identifying, monitoring and assessing systemic risk and MIFID reporting for market surveillance. While agreeing on those objectives as the main drivers of the two systems, we have always assumed that the objectives of the reporting obligation under EMIR were broader than systemic risk and comprise also increasing transparency and monitoring of market integrity, as contained in recital 9. EMIR data will be accessed and used by a number of authorities for purposes different from systemic risk monitoring (e.g. ACER or supervisors of trading venues, among others) and this makes the issue of consistency of data between the two regimes a relevant one.

Finally, your letter states that there is no need to reconcile reporting under EMIR and MiFID. Under the revised MiFID proposal presented by the Commission and currently under negotiation, it is envisaged that TRs can act as authorised reporting mechanisms under MiFID for the purpose of avoiding duplicative reporting requirements under EMIR and MiFID. Even acknowledging that no full reconciliation can be achieved, it is therefore very relevant that the two data sets, the one arising from MiFID transaction reporting and the EMIR one, are accurate and consistent to the maximum extent possible. Otherwise, there is a risk that regulators will not use the EMIR data for ETD monitoring and will continue to rely only on already existing reporting mechanisms for the exercise of their duties.

In any case, we take note of the upcoming rejection of the proposed implementing technical standard. Although we consider that any guidance to be issued before February 2014, developed in a limited time and without consultation, is unlikely to produce the desirable quality of data that regulators would need for the exercise of their duties, I would like to inform you that ESMA is already working on providing some guidance, probably in the form of a Q&A, in case the Commission's intention is confirmed.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Steven Maijoor".

Steven Maijoor
Chair

European Securities and Markets Authority