



The voice of banking  
& financial services

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**23 November 2011**

Dear Phil

Sent by email to: [tmu@fsa.gov.uk](mailto:tmu@fsa.gov.uk)

### **BBA and FOA Industry Response to FSA Consultation on TRUP V3**

The BBA is the leading trade association for the UK banking and financial services sector. We represent over 200 banking members, which are headquartered in 50 countries and have operations in 180 countries worldwide. These member banks collectively provide the full range of banking and financial services and make up the world's largest international banking centre.

The FOA is the industry association for more than 160 firms and institutions which engage in derivatives business, particularly in relation to exchange-traded transactions, and whose membership includes banks, brokerage houses and other financial institutions, commodity trade houses, power and energy companies, exchanges and clearing houses, as well as a number of firms and organisations supplying services into the futures and options sector.

The BBA and FOA welcome the opportunity to respond to the FSA's guidance consultation on the Transaction Reporting User Pack.

### **Background**

Our members recognise the importance of an effective reporting regime which supports the FSA in meeting its statutory objectives in the detection of market abuse and prevention / detection of financial crime. We are keen to continue to work closely with the FSA as our member banks have a wealth of experience regarding the practical implications of introducing some of the suggested changes and therefore continue to appreciate the opportunity to participate in consultations. We believe this dialogue between the regulator and the industry supports the ability of the FSA to lead Regulatory Reporting policy formulation in Europe.

## General Comments

Members are reassured that many of the pre consultation changes have been considered and incorporated. Notwithstanding there is some disappointment that several significant changes have been made post the pre consultation, however considering the likely timetable for MiFIR implementation the majority of the new version is welcome and members acknowledge the considerable effort made by the FSA in the completion of this exercise..

## Comments on specific issues raised in the consultation

### 1.2 Scope of TRUP

Our members are grateful for the regular communication of updates between the FSA and Firms via the Market Watch and they find this a useful and effective way to ensure they are complying with transaction reporting requirements in the way the FSA intends. Our members however would like to point out that recently an important clarification regarding the reporting of stock contingent trades and LIFFE BIC codes was communicated through a circular from the Exchanges. Our members request that ALL updates in relation to Transaction Reporting particularly important revisions such as those noted above are included in a new Market Watch so all firms can review the updates in a timely manner. Occasional 3<sup>rd</sup> party circulars should not be used as a method of communication.

### 3.2b Transaction Reporting Commodities, Interest Rates, FX

The paragraph says ~~commodity, interest and FX derivatives are non reportable~~, it then goes on to add ~~unless those derivatives are securitised and admitted to trading on a regulated market or prescribed market~~

This seems to imply that exchange traded derivatives on these instruments are reportable. However the next paragraph explicitly states that following agreement with CESR and the EC that competent authorities need not require firms to report transactions in non-securities derivatives (ie commodity, interest rate and FX derivatives) admitted to trading on regulated markets. The second part of the above sentence should therefore be deleted to avoid ambiguity.

### 3.3 Reportable Transactions

The FSA appropriately highlights that a transaction under MiFID excludes primary market transactions which therefore do not need to be transaction reportable. Our members understanding of ~~primary market transactions~~ is that it is a broad definition covering all ~~new~~ issues of financial instruments which could include secondary issues such as rights issues and capital raisings as well as IPOs. Members believe it would be useful for the FSA to reflect these exclusions explicitly in the TRUP to avoid ambiguity.

### 7.3 Trading time

Our members note that section 7.3 has been reworded. The revised wording removes the following wording:

*“Where reporting firms are unable to meet the requirement to populate the trading time field with the correct trading time and instead provide the time at which the trade is entered into their system, firms should make best efforts to minimise any discrepancy between the trading time and the booking time”*

Trade time is required to be reported accurately to the second. Where transactions are executed electronically firms are able to implement reporting arrangements to achieve this. However, there are a limited number of situations in which capturing the trade time to this degree of accuracy is much more difficult. Firms have hitherto used the flexibility the above paragraph gives to provide the FSA with a trade time that is a very close approximation to the actual time of trade. This information we believe is useful to the FSA in its efforts to identify transactions of interest. We are concerned that the removal of the flexibility available in TRUP 2 will force firms to submit more transaction reports using a default time resulting in the FSA receiving less information rather than more. We therefore encourage the FSA to reconsider the removal of flexibility in this area.

#### 7.17 Quantity

The first part of second paragraph states that:

*“The quantity should be positive for ISIN and Aii transactions. The FSA will reject transaction reports with a zero or negative value in the quantity field.”*

However the second part of the paragraph continues:

*The quantity should not be negative for OTC derivatives. If a negative value is used, the transaction report will be rejected.*

This seems to imply that it is acceptable for the quantity of an OTC derivative to be zero. If this is not the case we suggest that the wording is tightened to remove ambiguity.

#### 7.18.3 Use of %INTERNAL+

Notwithstanding comment on the details of this issue, the industry is concerned with the short implementation timescale (March 2012) in view of a previous FSA commitment to give the industry a full 6 months notice where changes will require firms to make system changes especially when the likely release of the TRUP v 3 comes well after many firms will have finalised their budget and planning processes for 2012.

At the TRUP workshop on 14th September 2011 we went through a draft version three of the TRUP line by line. Section ~~7~~.18.3 Use of Internal had the following text:

*“When identifying an internal account (e.g. an aggregated account or an average price account), firms must use the code ‘INTERNAL’ (see sections 9.2 and 9.3)”*

Our members thought this wording was non contentious.

The latest versions of the TRUP circulated for consultation has modified section 7.18.3 to add in particular the following wording:

*"We expect an agency transaction to be reported in a single transaction report (without using the internal account) and this guidance will be effective from 31 March 2012"*

If this change were to be mandated then the suggested target date of 31 March 2012 is unrealistic

Our members believe that it would be prudent to explore in more detail the rationale for this suggested change so that both the Industry and the FSA can better understand the full implications of any move away from the current regime.

Additionally it appears to directly contradict guidance in section 9.3 and so we would suggest this whole sentence be deleted.

#### 8.3.5. Credit default swaps

The BBA has been involved in discussions with the FSA on the reporting of CDSs and we understand that FSA are proposing to seek agreement amongst its counterparts in ESMA to report the coupon in basis points in the strike price field with the upfront fee in the unit price field in currency as originally published in Market Watch 38. The proposals in TRUP 3 mandate a different approach with the coupon and the upfront fee in basis points of the notional being reported in the unit price field.

We would like to draw the FSA's attention to the fact that the latter proposal is likely to operate as a short term interim reporting approach and runs contrary to the proposals set out only recently in Market Watch 38. We are fully supportive of improvements to CDS reporting but we do not see the benefit of introducing an interim approach which would be disruptive, costly and would create comparison and interpretation issues when viewing CDS transactions over time. Furthermore, we would draw the FSA's attention to the upfront fee which includes any interest accrued since the last coupon roll. Bundling accrued interest, upfront fee and running coupon in one price field will not provide the pricing clarity that is needed to monitor and understand activity in the CDS markets.

Under Dodd-Frank reporting to Global Trade Repositories (GTRs) such as the DTCC is being introduced. It is highly likely that reporting to the GTRs will require separate reporting of the upfront fee and coupon as well as the use of swap and product identifiers as this information is required to properly interpret each CDS transaction. As such we urge the FSA to pursue, as far as possible, consistency of reporting obligations across regimes and to reconsider its request for an interim reporting arrangement for CDSs.

#### 9.4 Receipt and transmission of orders

Members have asked that additional text is added to make it clear that this guidance applies only to Exchange Traded Derivatives.

If it is the FSA's intention to extend the request to all instrument classes, we would like to make the FSA aware that this represents a major change in the reporting model firms operate and would necessitate significant development work which, in addition to being costly, will take time to implement. We therefore request that the timeline for this proposal is given due consideration.

#### 9.6.2 Portfolio managers relying on a third party to report on their behalf

The wording to this section implies firms report on behalf of portfolio managers

However we would point out that the sell-side does not report on behalf of a client. Under certain circumstances a portfolio manager may rely on a sell side firms own obligation to report.

Firms have experienced issues where buy side firms have been unclear as to their own obligations - we suggest inclusion of the following section:

#### Transactions with a non-MiFID firm and reporting obligations

Where an investment manager places an order with a MiFID investment firm and the execution of that order results in transactions contractually arranged between a MiFID investment firm's non MiFID affiliated broker and the investment manager or results in transactions contractually arranged between a Non MiFID affiliate of the investment manager and the MiFID firm then we expect the investment manager to make its own arrangements to ensure that it makes the necessary transaction reports. *The investment manager can not rely upon the fact the MiFID investment firm has obligation to make its own transaction report and will therefore need to make a separate report to us because of the presence of a non-MiFID counterparty to the transaction*

#### 10.3 Transaction reporting failures and errors

The text says:

*"If your firm finds errors in transaction reports or fails to submit some or all of its transaction reports as required under SUP17, we expect you to notify us as soon as possible of:"*

It then lists a series of actions for Firms to follow.

Our members query whether the FSA wants notification of each and every issue discovered with regard to transaction reporting and therefore whether clarification of the TRUP is required so that the TMU is notified only if there is a *material* error. The section as currently written appears to imply contacting the TMU and Supervisor after the detection of each and every transaction reporting issue.

Minor Amendments

- i) In the ~~F~~requently Asked Questions section there is a question regarding the reporting of Total Return Swaps. This would be more appropriately covered under section 8.3 under a new sub-heading
- ii) Finally, Suspicious Transaction Reports are discussed in 9.5; these would be more appropriately covered under a more general heading Section 2.