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Head of Unit
DG Energy
Directorate-General for Energy
Directorate B – Internal Energy Market
B.2 – Internal Market II: Wholesale Markets: Electricity and Gas
Brussels

2 June 2014

Dear Ms Bernaerts,

Concerns regarding REMIT reporting regime

The Global Financial Markets Association (GFMA)¹, The Futures Industry Association Europe (FIA Europe)² and the International Swaps and Derivatives Association (ISDA)³ are writing to you to share our concerns regarding the reporting regime under the Regulation on Wholesale Energy Market Integrity and Transparency (1227/2011) (**REMIT**).

We strongly support the objectives of the Agency for the Cooperation of Energy Regulators (**ACER**) in preparing guidance on the reporting regime under REMIT to enable clear and transparent reporting. Furthermore, we consider that it is important that ACER has access to high quality information from market participants that is reported on a consistent basis and capable of being amalgamated with the information that ACER will receive from trade repositories and other sources, which has been reported in accordance with other EU legislation.

¹ The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, please visit <http://www.gfma.org>

² The Futures Industry Association is the leading trade organization for the futures, options and OTC cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world's largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. For more information, please visit <http://www.foa.co.uk/>

³ ISDA's mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers. For more information, visit www.isda.org

We have been following the developments in the REMIT reporting regime closely and have previously provided comments on the proposed regime⁴, including comments on data security and the use of the Legal Entity Identifier. Furthermore, we have attended the REMIT Roundtable meetings, including the most recent one held during May.

However, we are still concerned that the proposed Commission Implementing Act and ACER's current draft guidance do not give market participants sufficient certainty regarding their reporting obligations under REMIT. This may present challenges for market participants in complying with those obligations and also for regulators in achieving their regulatory objectives.

We note that many of these concerns were also raised in the context of the reporting obligation under EMIR (Regulation 648/2012), and were subsequently addressed through a detailed Q&A document published by the European Securities Markets Authority (**ESMA**). In light of the overlap between the EMIR reporting regime (and the proposed reporting regime under MiFID II / MiFIR), we thought it appropriate to also copy this letter to DG Internal Market and Services so that it is aware of the similar concerns in relation to REMIT.

Additionally, we are concerned that we may not have received the most recent version of the Implementing Act. We have reviewed and commented on the version circulated in October 2013, however we are aware that different versions have also more recently been circulated to certain market participants.

An overview of our key concerns regarding the Implementing Act is set out below, but we would welcome an opportunity to meet with European Commission officials in order to explain and discuss these in more detail. Additionally, we would welcome a public consultation on the most recent applicable version of the Implementing Act, so as to enable all of our members to provide comments before the adoption of the Implementing Act.

We will continue to engage with ACER in relation to the development of the trade reporting regime (including the Trade Reporting User Manual, ACER guidance and any Q&A document published in relation to REMIT), however we believe that a number of more fundamental issues would best be addressed at the level of the Implementing Act.

In particular, please note the following key concerns:

- **Identification of market participants:** ACER indicated at the recent Roundtable meeting that an executing broker under an exchange traded derivative (**ETD**) transaction would be a "market participant" under REMIT. Under EMIR, the corresponding reporting role is fulfilled by the clearing broker instead. The proposed approach under REMIT will result in the duplicative reporting of transactions where the market participant under REMIT differs from the reporting counterparty under EMIR.

⁴ For example, see joint GFMA / FIA response to ACER's consultation on its draft Trade Reporting User Manual dated 2 May 2014, a copy of which we include for reference.

- **Reporting of transactions:** It will be necessary to tailor the REMIT reporting regime to enable effective reporting of ETD and other types of wholesale energy products. Each party involved in the execution and clearing of an ETD contract will have access to different degrees of information; in order to ensure that ACER receives all relevant information, it will be necessary to identify which party will be responsible for reporting each field. Additionally, if the clearing broker is not identified as a market participant, we would welcome confirmation that lifecycle events for ETD are not reportable by clearing brokers after transactions are aggregated into positions. Separate guidance on reporting of ETD (at both a transaction level and a position level) was given in the context of EMIR, and it would be useful to replicate that guidance in relation to REMIT.
- **Back-loading of reports:** Back-loading of reports in relation to transactions entered into prior to the reporting start date presents a number of difficulties which were discussed in relation to reporting under EMIR. We would welcome guidance on back-loading of reports under REMIT along the lines of the guidance given under EMIR.
- **Consistency with guidance on reporting under EMIR and MiFIR:** In addition to the above, we would welcome broader consistency between the reporting regime under REMIT and that under EMIR (and the regime proposed under MiFIR). In particular, we would welcome further clarification on the extent to which reporting of a transaction under EMIR will satisfy the reporting obligation under REMIT (including any requirement to report orders to trade under REMIT). We would also welcome guidance on whether circumstances where an executing broker would not be required to report under EMIR (e.g. agency transactions and trades given up for clearing within T+1) apply to REMIT reporting obligations.
- **Timeframe for implementation:** In light of experience elsewhere (especially in connection with EMIR), we believe that the proposed timeframe for implementation will be difficult to achieve, particularly where: (i) some determinations affecting the scope of the transaction reporting obligation have been delegated to ACER, without the Implementing Act specifying a deadline for resolving these or making the implementation date of the reporting obligation dependent on those determinations having been made; (ii) market participants do not yet have certainty over their reporting obligations; (iii) essential market infrastructure is yet to be developed; and (iv) best practices in relation to reporting have not yet been agreed.

In relation to the key concerns outlined above, there are various solutions, many of which have been considered in the context of the reporting obligations under EMIR. Each solution has its own benefits and drawbacks, and we would welcome an opportunity to further discuss the available options. In any event, we would recommend that these issues are specifically addressed in the Implementing Act and ACER's guidance.

We will continue to actively engage with ACER and provide any assistance possible to help address the practical challenges of implementing the REMIT reporting regime.

As noted above, we would welcome the opportunity for further discussion with officials of the European Commission and will be in touch to arrange a meeting as soon as practicable.

Sincerely

David Strongin



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2 May 2014

ACER
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Submitted by email to: Remit.PublicConsultations@acer.europa.eu

Dear Sir/Madam,

Subject: FIA Europe/GFMA Member Response to ACER Public consultation on the Draft TRUM for REMIT

The Futures Industry Association Europe (FIA Europe)¹ and the Global Financial Markets Association (GFMA)² are pleased to provide comments on the ACER's Trade Reporting User Manual (TRUM) for trade reporting under REMIT.

Before addressing the specific questions in the consultation, we take the opportunity to raise some high level points that we feel are important in the wider context of the reporting regime under REMIT.

General Comments

- **Single sided reporting.** We welcome the fact that one or both of the participants to a trade can appoint a third party *or* the other counterparty to report the trade on its/their behalf, as provided under the REMIT text³ and as recognised by the draft Implementing Acts presented by the Commission.⁴

We strongly support such single sided reporting under REMIT given that the objective of the REMIT regulation is to monitor and enforce prohibitions against market abuse. The same objective is true of MiFID transaction reporting and for this reason REMIT should mirror a single sided reporting approach.

1 The Futures Industry Association is the leading trade organization for the futures, options and OTC cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world's largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. For more information, please visit <http://www.foa.co.uk/>.

2 The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, please visit <http://www.gfma.org>.

3 Art. 8(1) and (4) Regulation on wholesale energy market integrity and transparency (REMIT) (No 1227/2011)

4 Art. 4(2) and (3) REMIT Draft Implementing Acts presented by the Commission on 30 October 2013

- **Back loading of trade data.** We would welcome clarity from ACER regarding back loading requirements, if any, as these would have a significant operational demand on IT systems. REMIT does not establish any obligation to report historical data, neither for trades nor for orders. In any event, we believe that any back loading obligation should be consistent with the requirements established under other EU reporting regimes.
- **Consolidated tape for REMIT.** We support the creation of a consolidated tape for REMIT trade data. Such a facility would allow both ACER to monitor the activity of the energy market, and market participants to reconcile the data reported in order to comply with their obligation to accurately report. We would appreciate receiving clarity from ACER on this point.
- **Data security.** We would like to stress the importance of having in place appropriate measures to protect the transferring of data to and via the different Registered Reporting Mechanism (RRMs). FIA Europe and GFMA members recognise this issue as a data security risk and an issue of key importance to their firms and their clients. We note that Article 12 of REMIT attempts to address the issue of confidentiality, integrity and protection of the information. However we remain extremely keen to review ACER's detailed technical requirements for RRM.

Response to Consultation Questions

- Q1 The Agency currently understands that the attached data fields (see Annex I of the draft TRUM) for the reporting of transactions in standardised and non-standardised contracts will be included in the Commission's implementing acts. Please provide us with your views on the attached data fields.**

As a general comment, we believe that the adoption of clearly enumerated codes in each field would reduce the instances of incorrect information thus ensuring a better quality of the data reported. The number of fields with options for free format text should be limited as much as possible.

Moreover, we think that where multiple options are available for populating a certain field (e.g. Field no 1 - ID of the market participant) a strict waterfall/hierarchy should be put in place.

With regards to some specific fields:

- **Field 1 & 2 (ID of the market participant or the counterparty and type of code).**
As an industry we have a strong preference for the use of an LEI code as a standardised market counterparty identifier. We recommend encouraging the use of an LEI code as this is widely accepted as single supranational identifier standard across many types of reporting mechanism (e.g. EMIR trade reporting and EBA supervisory reporting). The ACER registration code should be used as an alternative only when an LEI is not available.
Also we would appreciate clarification on whether Field 1 could contain a clearing house or CCP ID as per the explanation in the TRUM.

- **Field 53 (Duration).** We believe that duration periods identified in the current draft are too limited. We would suggest adding a broader range of alternatives which includes, for example, Weekend, BOM, BOW, 2-3 days, etc.
- **Field 55 (Days of the week).** We think that the periods currently proposed are too rigid. We would suggest adding another alternative which can be used for trades that include, for example, a weekend but also an extra weekday (i.e. Fri to Tues delivery).
- **Field 56 (Load delivery intervals).** We interpret this field as requiring the load delivery intervals, for calendar trades (i.e. daily delivery for hour 10.00-11.00). This would result in a large number of rows of data (>100) if ACER requires the reporting of every date and delivery period to be individually listed. We would appreciate more details on the information to be reported in this field.
- **Field 62 (Lifecycle events).** We believe that the taxonomy in this field should be aligned with the EMIR life cycle event taxonomy. It would be useful to further discuss the information that has to be reported for this field, particularly in case of transactions reported by a third party on behalf of the market participants.

Q2 Please provide us with your general comments on the purpose and structure of the draft TRUM, annexed to the consultation paper.

We welcome the TRUM and the level of detail provided to assist firms in preparing for the reporting requirement go-live under REMIT.

We appreciate that the document is “live” and will be updated by ACER as required. We think that it would be particularly useful for market participants to have a Q&A section where ACER could update the industry with any changes or developments and respond to industry questions.

Q3 The Agency has currently identified a set of standard formats to be used in the reporting framework (see Chapter 5 of the draft TRUM). Do you consider these standard formats relevant? Are there any other standards that the Agency should consider?

We do not have any specific comments. Please also note our responses to Question 1 and 4.

Q4 Please provide us with your views on the field guidelines for the reporting of transactions in standardised supply contracts (see Chapter 6 of the draft TRUM).

We note that some particular fields may overlap and result duplicative information and we would appreciate ACER providing more details on these points. Specifically we refer to the following fields that, in the majority of cases, include the same information:

- Field 28 (Transaction ID) and Field 31 (Transaction Reference Number)

- Field 40 (Quantity) and Field 41 (Total Notional Contract Quantity)

We also look for some guidance on the below fields:

- Field 29 (Linked Transaction ID): could ACER provide more clarity regarding what a linked transaction is, possibly including some examples;
- Field 36 (Index Value): could ACER clarify what Index Value they expect to see populated and whether this is a value that should be populated at the time;
- Field 59 (Price/Time Interval Quantity): could ACER provide some guidance as to what transactions they would see populated in this field and provide a more detailed example as to how it would be populated.

Q5 Do you agree that for the reporting of energy derivatives, the same standards that apply under EMIR and MiFID should apply under REMIT (see Chapter 7 of the draft TRUM)?

We agree that maximum harmonisation between the standards applicable under REMIT and those applicable under MiFID/EMIR helps to avoid duplication and minimises the reporting burden on firms. It also facilitates the approach taken by the draft Implementing Acts⁵, which provides that a report made under MiFID/EMIR discharges the reporting obligation under REMIT. As stated above (*please see General Comments, Point 1*), we support a single sided reporting mechanism, similar to that adopted in MiFID, and not the EMIR double sided reporting regime.

Q6 The Agency intends to include in the TRUM guidance on how trade reports shall be reported for different trading scenarios (see Chapter 8 of the draft TRUM). Please provide us with your views on which trading scenarios you would consider useful to cover in the TRUM.

We believe it would be useful for ACER to explain how trade reporting will work for the following scenarios:

- **Approximate load deals.** These are deals where the quantity is not originally known so an approximate quantity is entered into the trade. The trade will be updated when the quantity is eventually known. Sometimes this quantity is nominated before delivery, however usually it is not known until after delivery. This type of deal could lead to multiple amendments over their life and may result in daily updates in reporting. We would be interested in knowing how ACER expects this type of deals to be reported when the exact delivery amount is unknown at the time of execution.
- **Options with formula pricing.** For tolling option trades the price at which the option can be exercised can consist of an FX rate, coal price, emissions price and an oil price. We would need to know under which contract type tolling arrangements have to be reported.

⁵ Art. 5(5) REMIT Draft Implementing Acts presented by the Commission on 30 October 2013

Q7 Please provide us with your views on the section in the draft TRUM related to data integrity (see Chapter 9 of the draft TRUM).

We believe that when orders or trades are reported by an organised market on behalf of market participants, the accuracy and completeness of this reporting should show the level of integrity acceptable to ACER given that an organised market is independent of the parties to the transaction.

When information is reported directly by the market participants through an RRM, we would agree that the market participant should be responsible for the accuracy and integrity of the information sent to the RRM. However, as an RRM must meet the security criteria required by ACER and will be interfacing directly with ACER, we believe that the RRM should bear the responsibility for ensuring that the market participant's information is provided correctly to ACER.

If market participants are to undertake periodic validation on information held by ACER, they would require reports to be available from ACER either on request or on a periodic basis. As previously stated (*please see General Comments, Point 3*), we request that ACER gives a reporting solution its full consideration.

FIA Europe and GFMA very much appreciate the opportunity to provide comments on the Consultation and trust that you find them helpful. We would, of course, be happy to discuss our response with you at your convenience.

Sincerely

A handwritten signature in black ink, appearing to read 'S. Puleston Jones'.

Simon Puleston Jones
CEO
FIA Europe

A handwritten signature in black ink, appearing to read 'David Strongin'.

David Strongin
Executive Director
GFMA