



Mr. Rodrigo Buenaventura,
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13 February 2013

Dear Mr Buenaventura,

Reporting of exchange-traded derivative contracts to trade repositories

A. Introduction

Thank you for your letter dated 13th December 2012 and for hosting our meeting on 18th January 2013. As we discussed, the Futures and Options Association ("FOA") is committed to working with ESMA and the national competent authorities to ensure that the exchange traded derivative ("ETD") industry manages an efficient and timely implementation of the reporting obligation under EMIR. As a step in this direction, we have provided input into the development of ESMA's "Q&A document" with respect to EMIR, which we understand you plan to publish around March or April this year.

As discussed with you during our meeting last month, there are a number of open questions regarding the reporting obligation in the context of ETDs, including the distinct stages at which reporting should take place, as well as technical details around the exact information to be reported. It is important that ESMA's Q&A provide additional clarity around the relevant EMIR technical standards so that the industry can implement and comply with the reporting obligations in a timely manner. Additional clarity is of particular importance to the ETD industry, given the distinct challenges posed by a reporting obligation which, while designed to account primarily for over the counter ("OTC") markets, needs to accommodate both OTC and ETD market structures.

As we have mentioned, there are a number of important open questions relating to the interpretation of the EMIR technical standards for the ETD industry, which we believe can be helpfully clarified. We have set out below what are currently the most critical questions, with our proposed suggestions on how these open issues might be addressed. We would be very pleased to discuss these with you.

We expect to have further questions over time, as we continue to work towards final implementation. We hope that the points below will give you an idea of the significant work undertaken to date by our members, and the sizable amount of effort still required as the reporting deadlines approach. In addition, please note that we have only recently been able to start engaging with certain CCPs, while others have not yet joined our discussions. It is crucial for CCPs to be involved with this work for reporting solutions to be effective, as ESMA will appreciate.

As you will see below, we have outlined a proposed solution to the question of 'who reports and at what level' in ETD trading scenarios. Clearly this is an essential issue to be clarified as soon as

possible, to enable the ETD industry and CCPs sufficient time to build a workable reporting solution.

The obligation on counterparties and CCPs to bilaterally agree the common data prior to the submission of a report to a trade repository necessitates a common interpretation and application across the ETD industry of EMIR's requirements in terms of when a report is required, who is obligated to report and the content of each data field in the common data table. We also hope to encourage common supervisory approaches and practices across the EU in this area.

Participants in the ETD industry want to efficiently build reporting systems which enable regulators' objectives to be met from the outset. The breadth of the data to be reported (going far beyond MiFID), the systems changes required to 'collect' this data internally, and the effort required to coordinate with others how data will be shared and reported are each significant and require a lot of effort in the short term to be ready for interest rate and credit derivatives reporting, to go live as early as 1 July 2013. This makes it even more essential to get guidance on open interpretation questions as soon as possible.

Given the time constraints, our members are trying to design reporting infrastructure now and must start 'building' it as soon as possible, and, in most cases, before the currently envisaged publication date of the Q&As. To mitigate the risk that reporting infrastructure that is designed does not meet the expectations of ESMA, the FOA would encourage ESMA to publish its Q&A document as soon as possible. In addition, we would welcome discussions where possible and any interim guidance ESMA can provide which the FOA can share with its members.

B. Detailed comments for Q&A document

Clarification of the level at which ETD contracts must be reported

Question 1 a: At what point does the obligation to report arise in the context of ETDs?

Answer 1a: Article 1(2) of the Commission Delegated Regulation (EU) No...of 19.12.2012 supplementing EMIR with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories ("Regulation on Data") sets out that the obligation to report arises at the point of the "execution of a transaction".

In the context of ETD transactions, we note that there are differences in the legal construct of the contract formation process on derivative exchanges and consequently on CCP clearing mechanisms. For example, the "open offer" mechanism is legally a single-step process under which contracts with the CCP arise automatically upon execution in a trading venue. Alternatively, exchange-traded derivative transactions also take place on venues where a "novation" model is followed. The novation mechanism is legally a two-step process under which an existing contract (which is established on execution) is cancelled and replaced with a contract facing the CCP.

We note that Article 2(1) of the Regulation on Data states that "[w]here an existing contract is subsequently cleared by a CCP, clearing should be reported as a modification of the existing contract". This could imply the obligation to make two separate reports in the context of a novation clearing model. Given that the CCP-facing contracts are created on trade date via the novation mechanism, reporting two separate trade events does not appear to serve any purpose. For exchange-traded transactions which are cleared, there is no obvious rationale in requiring separate reporting events to capture a momentary 'pre-cleared' state of a transaction.

Similarly, it would not seem appropriate for executions cleared under an open offer model to be reported as “new” and for the cleared trade to be reported as a “modification” to the existing contract, since legally there is no contract prior to clearing. It is our proposal, therefore, that the first reportable trade in the exchange-traded context is at the cleared level of a trade, whether under the open offer or novation model.

We believe this proposal represents the most practical solution for reporting counterparties, CCPs, trade repositories and regulatory bodies. This approach would eliminate a significant volume of superfluous message submissions to trade repositories and facilitate a more efficient interpretation of the resultant data by regulatory bodies.

Question 1b: Give-up and give-in trades are very common in the exchange-traded derivative industry, where an executing broker will pass on or ‘give-up’ an executed trade to a clearing broker for clearing. The trade is a “give up” from the point of view of the executing broker, and a “give-in” from the point of view of the clearing broker. Would ESMA provide some clarification with respect to how a CCP, an executing broker and a clearing broker should report give-ups/give-ins, as the reportable data may not be known by the counterparties to the trade (including the CCP).

Answer 1b: In the context of give-up/give-in trades, we submit that the most sensible approach is for the executing broker to report the cleared execution or give-up leg of the transaction, and for the clearing broker to report the position data. We would welcome ESMA’s views on this, in particular on the data to be provided by CCPs.

Position Reporting

Question 2: Article 1(2) of the Regulation on Data states that reporting is required at the point of “the execution of a transaction”. Details such as collateral and life cycle data are not maintained at the execution level of a trade. Since this data arises as a result of the offsetting or aggregation of trades, and not through a trade event, how should collateral and life cycle data be reported? Is a Unique Trade Identifier required?

Answer 2: Our proposed answer is that position level reporting will be provided by counterparties in order to ensure that collateral and life cycle modifications are reported. Note that Article 9(1) of EMIR (Level 1 text) sets out that “[c]ounterparties and CCPs shall ensure that the details of any derivative contract they have concluded and any modification or termination of the contract is reported to a trade repository”. It is recognised that in the ETD industry, position level data does not arise as the result of a trade event, so we will explore with the ETD industry (including CCPs) whether a taxonomy using market identifiers can be used to appropriately identify position level reports.

Trade Repository Registration

Question 3: Will ESMA require that a trade repository (TR) offer reporting for both OTC and ETD derivative contracts in order to approve the TR for registration?

Answer 3: In an application for registration as a TR, the applicant must provide information to ESMA on the classes of derivatives for which the applicant wishes to be registered, but there is no requirement that both OTC and ETD derivative contracts are covered.

Question 4: How will ESMA establish that a TR has done sufficient analysis as to how the reporting obligation applies to ETD contracts and how the data reports received from the ETD industry will be processed, to ensure that the data to be shared with regulators will be meaningful?

Answer 4: ESMA and national competent authorities are working with the ETD industry to clarify how reporting should work. This Q&A document should provide a useful starting point for those applicants interested in being approved as a TR for ETD contracts. It is not in the best interest of the industry if a TR is approved for ETD contracts before this Q&A document is published. In addition, we encourage those TRs which plan to offer ETD reporting services to engage directly with the ETD industry as soon as possible, to ensure there is a shared understanding with respect to the application of EMIR's reporting requirements.

Question 5: In the situation where a firm has begun to work with a potential TR to establish a reporting infrastructure for a particular asset class, but a different TR is registered first for that asset class, will the firm be obliged to report to the first TR registered TR instead of the one with whom the firm had been working?

Answer 5: We are very keen for ESMA's views in this area. We suggest that ESMA consider introducing the concept of provisional approval and target approval dates for TRs which would be shared with the industry. This would give the industry an early warning of which TRs are in the frame for approval with respect to a particular asset class, preferably indicating whether ETDs will be included in the offering. We would also encourage ESMA to seek to approve a group of TRs, as opposed to issuing approvals/registrations in a piecemeal fashion, which could exacerbate the issues associated with having to switch from one TR to another, if a firm's chosen TR is not the first to be approved for that asset class.

Data attributes which are not applicable to ETD contracts

Question 6: How should certain counterparty data or common data fields be dealt with when they are clearly not applicable to ETD contracts?

Answer 6: As one example, field number 16 of the Regulation on Data requires 'clearing threshold' information to be provided. We suggest that the convention "N/A" be used to populate fields which are not applicable. A complete list of the fields which are not applicable to ETD contracts will be agreed at the ETD industry level and provided to ESMA, which we suggest ESMA could subsequently include in any update to ESMA's March Q&A document.

Back Reporting requirement under Article 5 of Commission Implementing Regulation on the format and frequency of trade reports to trade repositories according to EMIR ("Trade Report Regulation")

Question 7: Article 5 of the Trade Report Regulation appears to require the reporting of every exchange-traded derivative contract entered into from 16 August 2012. It is unlikely that this data, which would be staggering in terms of the number of reports from counterparties and CCPs to TRs, would actually be useful or serve the objectives of EMIR. Given that the ETD industry maintains positions at contract levels aggregated from daily transactions, would the provision of position level data be more practical, and more meaningful?

Answer 7: We propose that for ETD trades, counterparties should report contracts outstanding on 16 August 2012 and still outstanding on the reporting start date, as one off positions on the date prior to the reporting start date.

Unique Product Identifier taxonomy

At our 18 January meeting, ESMA requested assistance from the industry in developing a UPI taxonomy for categorising exchange-traded derivative instruments. Please let us know if this assistance is still of interest and whether we can schedule a call or meeting to discuss further?


Question 8: The Trade Report Regulation establishes a 'hierarchy approach', requiring a UPI to be used, but if that does not exist, an ISIN or Aii with the corresponding CFI code, and if that does not exist, a new product taxonomy must be agreed between the counterparties. What guidance can ESMA offer at this stage in terms of working toward an agreed UPI for the ETD industry?

Question 9:

Are bond futures going to be reportable as early as 1 July 2013, as part of the interest rate and credit derivative classes?

Thank you for considering this letter. As noted above, we would be pleased to discuss these issues further with you, at your convenience.

Yours sincerely,



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