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BVI`s position on the ESMA Consultation Paper on the Review of the technical standards on reporting under Article 9 of EMIR (ESMA/2014/1352)

BVI[1] gladly takes the opportunity to present its views on the ESMA Consultation Paper on the Review of the technical standards on reporting under Article 9 of EMIR (ESMA/2014/1352).

- **General Comments**

Implementation of the Regulation

We do not agree with ESMA`s proposal that the implementation of the Regulation shall enter into force on the twentieth day following the publication in the Official Journal. The implementation of the new technical standards should be made only mandatory for the reporting financial counterparties (e.g. UCITS/AIFs) at least six months following the publication of the Regulation in the Official Journal. This presumes that the trade repositories (TR) are able to provide the new data field requirements to the reporting counterparties promptly after the publication of the Regulation in the Official Journal. The implementation of the proposed new data fields by the management companies depends on the obligations laid down by the TRs on the reporting counterparties. Otherwise, management companies are not able to implement the new obligations meaning that incorrect derivative reports will be sent to the TRs.

Furthermore, the IT service providers which provide the IT fund accounting systems for the asset management companies, can only implement the new reporting fields on the basis of the final technical standards. All required data fields need to be specified in detail, preferably on the basis on ISO templates as interpreted by the Securities Market Practice Group (SMPG). This will reduce divergent interpretation of the reportable items. Based on the final specifications made by the trade repositories and the IT service providers the management companies are able to implement the reporting obligations.

Finally, the introduction of the so called level 2 validation rules should be implemented at the same time in order to avoid double cost and expenditure by the reporting entities.

Generating and communication of UTIs

BVI agrees with ESMA`s assessment to introduce a new Article 6 clarifying which reporting entity is responsible for the creation and transmission of the UTI in the absence of an agreement between the counterparties. However, ESMA should take into consideration a further provision clarifying that the reporting entity responsible for the transmission of the UTI should communicate the number to the other counterparty (e.g. management company) as soon as it is technically possible but at least within the trade confirmation process. The UTI should be transmitted to the other counterparty on a standardized

[1] BVI represents the interests of the German investment fund and asset management industry. Its 84 members manage assets in excess of EUR 2.4 trillion in UCITS, AIFs and assets outside investment funds. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the assets of 50 million private clients over 21 million households. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

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and automated basis enabling the counterparty to report the required UTI data field to the TR in time with no manual intervention.

In this context, we strongly support the work started by IOSCO to establish a global UTI concept with the participation of the financial industry. The creation of a global UTI solution could be based on the governance structure concept of the LEI initiated as a public-private partnership under the auspices of the FSB. It is of utmost importance that a global UTI is developed as a public good with no intellectual property rights attached to a specific party. The reporting financial counterparties should be able to obtain the UTI license free and free of charge. Furthermore, a UTI solution could be developed on the basis of a predetermined automatic algorithm for the reporting counterparties to a contract in order to avoid the generation of UTIs by the reporting entities with different concepts/methodologies.

The envisaged solution is analogous to the issue of TAN numbers in retail banking transactions. TANs are issued and sent real time to a large number of users. The algosystem should be provided by a global central unit, e.g. a FSB/IOSCO employed entity such as the Global LEI foundation.

We would like to make the following comments:

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.

We do not agree with the proposal to remove the category "others" from the derivative class and type. Financial counterparties (e.g. UCITS/AIFs) may not be able to classify the reportable contracts within a specific derivative class or type due to their hybrid nature (e.g. total return swaps and FX interest rate swaps). Furthermore, derivative contracts where the underlyings are composed of baskets with different asset classes make it difficult to allocate the products to the correct derivative class or type.

Therefore, we propose to maintain the category "others" for derivative classes and types until a global UPI concept endorsed by ESMA allows the classification and identification of all derivative products (please also see our response to question 4).

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.

We agree with the assessment.

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 agree with the assessment made in paragraph 21. However, we do not think it is useful to further define the concept of a valuation for OTC derivatives within the technical standard at hand as valuation is already part of the portfolio reconciliation process which the financial counterparties have to adhere to. Furthermore, it should be possible to use negative numbers in the reporting fields.

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.

We support ESMA´s intention to further standardize content and formats of the reporting data fields which will enable regulators to better analyze and aggregate the information relevant for the assessment of systemic risk in the derivative market.

- **Entity Identifier: Paragraph 29**

In this context, we strongly support ESMA´s assessment in paragraph 29 to use only the LEI as the primary entity identifier. A mandatory implementation of the usage of the LEI in the EMIR reporting will enhance the supervisory convergence and ensure high quality, reliability and comparability of data, supporting the authority's strategic objective to increase the overall efficiency of the supervisory system by promoting effective exchange of information. However, we are of the view that reporting counterparties should have the possibility to use existing identifiers, such as the BIC code in cases where already terminated trades have to be backloaded in the TR because such trades do not pose systemic risk.

- **Notional Amount: Paragraph 34**

We agree in general with ESMA`s proposal to amend and rename the current Table 2 Field 14 "Notional Amount" and to introduce two new fields on the notional. However, we suggest to replace the field "Original notional" with "Traded notional" as it could be difficult to retrieve the original "notional amount" in certain circumstances, e.g. for total return swaps with resetting Notional.

- **Unique Product Identifier: Paragraph 37**

In the context of the introduction of a global UPI, we support the work started by IOSCO to establish a global UPI with the aim to provide the market participants with an efficient product identifier for the derivative markets. A global UPI concept should also take into account the requirements by the regulators allowing them to evaluate the data needed for the assessment of systemic risk. As a starting point of discussion, a global UPI concept could be in principal based on the ISDA taxonomy or the ISO CFI standard. However, as already stated above on the UTI concept, it is of utmost importance that a global UPI is developed as a public good with no intellectual property rights. The reporting financial counterparties should be able to obtain the UPI license free and free of charge.

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.

- **Country of domicile of the other Counterparty: Paragraph 45**

We do not agree with the proposal to add a new field which contains the country code of the main residence of the other counterparty. The description “Country” is an attribute of the LEI which can be derived from the LEI static data. Therefore, we do not see the requirement to add a new field.

- **Reporting of collateral: Paragraph 52**

We support the proposal to replace the “value of collateral” field with two new fields for the “initial margin posted” and the “variation margin posted”. We are of the view that the counterparty which is obliged to post collateral should also report this value to the TR. The counterparty who receives the collateral should leave the field blank. We encourage ESMA to provide more clarity in the description of these fields.

- **Unique Trade Identifier: Paragraph 55**

We agree with the proposal. Please see our remarks in the general comments. A clarification is required related to the new Article 4 (a) para 2 (d) (iii) on the definition of “seller”. We are of the view that the “seller” should be the Sell-Side, i.e. credit institutions and investment firms (e.g. broker/dealers) according to the definition of financial counterparties in EMIR (Article 2 para 9). UCITS/AIF management companies should be exempted from the definition of the seller.

We propose the following new recital (8):

(8) EMIR requires financial counterparties to agree on the report content before it is submitted to the trade repositories. This also includes the agreement on the Unique Trade Identifiers (UTI). If the counterparties fail to generate a UTI Article 4 (a) provides clarity of the hierarchy for a generation of the UTI. If the UTI needs to be agreed within the same group of entities the seller, meaning credit institutions and investment firms in accordance of EMIR Article 2 para 8, generates the UTI.

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

We assume that paragraph 44 instead of 40 refers to the negative value to be reported to a TR. We support the proposal to apply 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 have no comments.

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.

We assume that paragraph 49 instead of 45 refers to the identification of indices/baskets.

We do not support the proposal to provide more granular data in the case of baskets or indices, especially the identification of each individual financial instrument. ESMA suggests that the reporting counterparties should provide the full name and each financial instrument of the index assigned by the index provider. However, according to the proposal made by the EU Commission on the regulation on indices/benchmarks[2], index providers are not required to make the index sufficiently transparent to the public as the EU Council and the ECON deleted Article 16 of the stated regulation.

German UCITS/AIF management companies are not in the scope of the MiFIR transaction reporting obligations. Furthermore, they do not have access to the composition of the baskets/indices. The reporting of the identification of each financial instrument in the baskets/indices by the management companies is too burdensome/complex as the composition of the benchmarks/baskets changes over time and therefore complicates the operational process to have all relevant information available to be reported to the TR on T+1. We fear that the matching of the underlying data fields within the baskets/indices between the reporting counterparties is very complicated as the information is provided from different sources in multiple formats. Therefore, we propose to keep the current field "B"/"I" as the only reporting requirement.

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.
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?
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:
60. 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;
61. 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;
62. 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;
63. 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.

We have no comments.

[2] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0641&from=DE.