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Mr Rodrigo Buenaventura
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29 January 2014

Dear Patrick and Rodrigo,

Re: Obligation to report exchange-traded derivatives to trade repositories under EMIR

We are writing further to our letter dated 21 November 2013, and to ESMA's 20 December 2013 Q&A document on the Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR).

ESMA's 20 December Q&A document has provided useful clarification to the industry and we are grateful for the effort taken with its drafting and publication.

Elements of FOA's approach are confirmed

We were pleased to see that a number of elements of the approach of the FOA working group have been endorsed by ESMA. These include that positions could be reported under certain conditions, and that life cycle events should be reported as against positions. We also welcome that for back-reporting, in terms of trades concluded between 16 August 2012 and 11 February 2014, counterparties "are expected to report only their resulting net position at the CCP level as of the end of 11 February 2014", which is in line with FOA's approach too.

ESMA also confirmed our approach with respect to which parties should report ETD business. As you know, we have taken the view that if an executing broker (EB) has successfully 'given up' the trade to a clearing member and is therefore not in a risk position vis a vis that trade, then it is not necessary for that EB to report. This view appears to be captured in the 20 December Q&A.

Industry's efforts regarding the application and construction of UTIs

We are pleased that ESMA has not pursued the idea that the same Unique Trade Identifier (UTI) should be used *across* all participants in separate but related ETD transactions. We also note ESMA's reference on page 61 of the 20 December Q&A document to the potential for a "single approach for the construction of the Trade ID at the European level". As you know,

we shared a document with ESMA staff on 12 December 2013 which set out a description of the FOA working group's initiative to standardise the methodology for creating UTIs for ETD reporting. Under this concept, counterparties would independently generate identical UTIs between them using data fields known or shared by each party, thus eliminating dependencies between counterparties on the timing of when and how the UTI would be shared. After a counterparty has populated the components of the UTI, these would then be compressed by an algorithm in order to be in an EMIR-compliant format.

While there is a great amount of interest and enthusiasm within our working group regarding the 'universal UTI' concept, collaborative work to develop it further has been impacted as firms focus on preparations for the 12 February 2014 reporting start date (RSD). Further analysis will resume but likely not until our member firms have been able to absorb the material in the 20 December Q&A – which in many areas provides a more granular level of detail than has been provided previously by ESMA for ETDs. It should be recognised that the industry will require some time to process and analyse the direction given in the Q&A with respect to ETD reporting, in particular in areas where 'new' initiatives from ESMA are presented, such as the need to populate the Transaction Reference Number (TRN) field with a code from an exchange or CCP.

Industry wide deficiencies post 12 February 2014

As noted above, much of the material in the 20 December Q&A was welcomed by our member firms as providing much needed clarity and direction. However, in several areas ESMA has introduced what is perceived to be *new* guidance for the industry. These areas will require a significant degree of analysis and collaboration before real traction will be possible with respect to implementation. For example, up until 20 December, our members had interpreted the Transaction Reference Number field (Table 2, Field 9) as requiring a firm's own internal transaction reference number. There was no indication until the 20 December Q&A that the TRN should actually "have its origin in a centralised infrastructure (e.g. the trading venue or the CCP)", or even more simply that this must be a code generated by the CCP.

We of course appreciate that ESMA has had to develop guidance very quickly in order to publish the Q&A before the RSD. However, it is problematic in our view to introduce a degree of prescriptiveness - as was presented in the Q&A for the TRN field - in the absence of consultation with industry. Going forward we would like to have a dialogue with ESMA to help create optimal solutions to problems and avoid unintended consequences. Given the operational complexities involved, discussion and analysis is needed to determine the feasibility of measures before they are announced to the industry.

In any event, the population of Table 2 Field 9 with a code provided by an external party is a new functional requirement and requires the creation of a specification and subsequent IT build, both of which involve unanticipated time and resource. Using an exchange or CCP generated code as a solution at this late stage may actually be causing more problems than it solves, in particular when one considers that this is a 'Common Data' field, requiring a match with one's counterparty in order to avoid being rejected by the trade repository. There is not enough time between 20 December and the RSD for our members to successfully incorporate changes to their course of preparations in order to accommodate new functional requirements. Additionally, the industry would advocate for a single unified approach to solutions where possible, since diversification in implementation may introduce unnecessary complexity.

As a broader issue, we would like to point out our general observations regarding the degree of readiness of those market participants involved with ETD trading, but who are outside the FOA membership. Unfortunately it appears that many clients of our members are still unsure regarding their own EMIR obligations generally and how – at a technical level – their ETD business will be reported to trade repositories. While this is something regulators are undoubtedly aware of, there will inevitably be reporting discrepancies across the EU for some time to come due to the different levels of preparedness and compliance across market participants. It may be appropriate for regulators to look more intently at the client community to ensure they are undertaking the necessary preparations, because they will certainly have a significant impact on whether the ETD market overall responds well to the challenge of reporting under EMIR.

Need for on-going collaboration with ESMA, post 12 February 2014

As noted above, we fully appreciate that regulators will require some means of linking trading behavior together, to enable ‘full traceability’ from the point of execution through to client allocation. As you know, following our meeting in Paris with ESMA staff in late November 2013, the FOA provided a document to ESMA before Christmas that described an alternative method of finding connections within the TR data. We did not have much time to prepare this and more analysis remains to be done, incorporating any feedback we may receive from ESMA. Coming up with a workable solution will in our view require a high degree of industry collaboration, working with regulators, so may be an appropriate area of focus for the new industry consultative group supporting ESMA’s Market Data Reporting Working Group. An innovative approach will be needed, because ‘true linkage’ on a trade-by-trade basis is impractical as most trades are ‘re-shaped’ post execution.

We believe strongly that FOA’s members should be given the opportunity to help regulators develop a solution to the problem of how to trace/connect data reports together. The FOA working group has clearly demonstrated its ability to contribute meaningfully when implementation challenges arise. This area is one where operational expertise should be fully harnessed to ensure the data obtained enables the objectives of EMIR to be met.

As a separate point, we would like to bring your attention to a list of issues that FOA’s members are finding challenging in the lead up to the RSD. We believe it is important for ESMA and national regulators to be aware of the significant implementation challenges that remain in place for ETD market participants. Undoubtedly, many of these have been raised in the course of bilateral supervision meetings between firms and their regulators, but we have provided a list of high level issues which are affecting a large number of our members. Please see **Appendix A** to this letter.

As always, we would be happy to discuss any of these issues at your convenience and look forward to working with you going forward.

Kind regards,



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Appendix A

- It appears that certain EU CCPs have not finalized their UTI logic and/or have not made it available to clearing members with sufficient lead time to implement. Must be agreed in sufficient time to deploy safely prior to go-live. Alternatively, clearing members will default to member specific UTI construct where this is not available.
- Position reports – given it was clarified only on 20 December 2013 that position reports could be made, reporting at this level and associated UTIs is still in progress for some firms
- Product Identifier and CFI code. CCPs have not made this data available in all circumstances. Some firms have therefore derived it independently. Industry to look at whether a central hub of reference data (ISINs/AIIs/CFIs) can be created. In addition, these fields have optional types of population (for example, it is possible to put an ISIN or an AII) and where reporting firms differ in the population, it could cause matching issues on “good” reports
- Lifecycle event and T+n amendment processing logic may be inconsistent. For example, ‘Cancel and correct’ versus ‘amend’ has different messaging results. There may also be differences in how this is reported, at a trade or position level.
- Q&A 6: “Execution timestamp should correspond to the time of execution on the trading venue” and “the Clearing timestamp should be reported as the time at which the CCP has legally taken on the clearing of the trade”. Timestamp for clearing member versus client transactions does not necessarily reflect execution or clearing time. Industry consensus required to define consistent and appropriate logic in this scenario. Need to confirm whether all CCPs / exchanges provide an “execution time stamp” and clearing timestamp.
- The FOA WG has taken an interpretive view on a number of fields in terms of how they should be populated for ETDs but there is no guidance on whether these views are acceptable to ESMA or not. Certain fields are interpreted as non-applicable to ETDs - for example, should “effective date” be populated, and if so, how? Should we use trade date?