David Lawton
Director of Markets Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf

11 October 2013

Dear David

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

I am writing to advise you of FOA's concern at the current lack of clarity regarding reporting requirements under EMIR for exchange-traded derivatives (ETDs).

We anticipate that a significant number of market participants will simply not be ready to report ETDs to trade repositories by the indicative reporting start date of Q1 2014. This is because market participants are currently in the position of having to build reporting infrastructure as against a set of implementing technical standards which ESMA has itself described as lacking sufficient clarity.

As you know, ESMA concluded in its August 6 report that further regulatory guidance is necessary with respect to the reporting of ETDs. ESMA stated that without such guidance, there is ambiguity with respect to which party actually has an obligation to report, among other problems.

ESMA's draft guidance is being anxiously awaited by FOA members. The latest information we have about ESMA's plan in this area is from Steven Maijoor's 1 October 2013 speech, where he said that "the European Commission signalled last week that it does not intend to support [the ETD] delay. While far from ideal, if the delay is not endorsed by the European Commission, ESMA intends to provide some Questions and Answers on ETD reporting before the start of the reporting obligation."

Steven Maijoor's statement that this situation is "far from ideal" resonates with us and with our members. We agreed with ESMA's statement in its August report that ETD reporting guidance "cannot take the form of Q&As, because it is not a simple clarification on how certain provisions should be implemented". ESMA continued that "it will require a significant development of the different scenarios according to which ETDs can be executed, cleared and reported." Further, "the need to develop guidelines and recommendations" is justified by a number of reasons, among which is "the need for market participants to establish the relevant technical arrangements for reporting in a correct manner."

Essentially, ESMA determined in August that publishing Q&A for the market would not provide adequate clarity for the reporting of ETD transactions, but now that the Commission appears to be reluctant to provide extra time, suddenly the Q&A approach is deemed adequate.

At the moment, FOA members are basing their reporting solution build for ETDs on a set of assumptions with respect to the applicability of the technical standards.   I have attached latest version of the FOA working group's 'Discussion Document', which illustrates the interpretive work which has been done in order to reach consensus on how to report ETDs. As you may be aware, FOA started sharing this interpretative work with ESMA in January 2013 and with a number of national competent authorities shortly thereafter. We visited ESMA several times and met with the AMF, the CNMV, the Swedish FSA, Consob, the AFM, and have exchanged correspondence with Bafin. To date however, none of our key assumptions (including on the issue of 'who reports') have been validated by ESMA or any of these authorities.

We would be grateful for the FCA's comments on how firms should best prepare to report ETDs, given the current lack of clarity from regulators and the likelihood that the reporting deadline will be in Q1 2014.

We would be pleased to meet with you to discuss at your earliest convenience.

Kind regards,

Kathleen Traynor
Executive Director
Futures and Options Association

Cc David Bailey, FCA
Barry King, FCA
Tom Springbett, FCA