

Ms Sally Springer
Senior Policy Director
BBA

Mr Blake Stephenson
Regulation Manager
FOA

Ref: Reporting of ETD contracts to Trade Repositories

Dear Ms. Springer,
Dear Mr. Stephenson,

Thank you for your letter dated November 20th. We agree that the particularity of EMIR including the reporting of all derivatives to trade repositories (TRs) and not only OTC derivatives calls for a reporting design that takes into account some specificities and not only the EMIR provisions but also MiFID transaction reporting elements.

You will understand that at this stage it is not possible for ESMA to deviate from EMIR or the standards that are being endorsed, but rather find the best mechanics to ensure proper and timely implementation and your input is of course welcome. On the matters raised in your letter, we may already highlight some points.

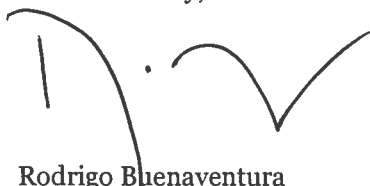
- ETD involve chains, but chains are also common in bilateral trades where novation or assignment may occur and where apart from counterparties there may be beneficiaries, even if less of them would be individuals as in ETDs. Chains may indeed be complex but in our view not a major difference between ETD and bilateral contracts, and certainly not prevent common reporting regimes provided that the design of such regimes takes into account the different reporting needs from a MiFID and an EMIR perspective.
- CCPs may indeed not be aware of the ultimate beneficiary, and counterparties need to ensure that information on beneficiaries is transmitted to CCPs in order to enable them to report. This applies to any entity covered by the reporting obligation, i.e. any counterparties and CCPs as specified under Article 9 of EMIR.
- Collateral reporting is enabled at portfolio level, precisely to recognise its usual aggregation (to which you refer as the overall position of the clearing member).

- On new infrastructure, we are keen to enable, as much as possible, reporting via a single channel and infrastructure in so far counterparties wish so, and this has been the feedback received in our consultations. In order to do this we considered all relevant items to be reported under EMIR, MiFID, REMIT and built the minimum reporting standards now being endorsed by the Commission. There also seems to be appetite from some quarters to consider, in the future, elements from the banking and insurance directives. We are however dealing with a very pressing timeline determined at global level (G20).
- The reporting timetable reflects these international commitments and Europe is therefore unable to act unilaterally on this matter. ESMA included however very reasonable periods for reporting of some elements (one case for instance was collateral, following responses received to our public consultation). We are not in a position, at this stage, of considering new changes and, above all, we do not have the possibility of granting waivers, “no-action letters” or extension of deadlines.
- We agree the EU needs a harmonised approach and we are confident that EMIR and the technical standards are a major step in that direction. We would add that harmonisation is also relevant outside the EU and we are in open dialogue with market regulators world-wide in order to ensure regulatory consistency as much as possible.

In any case, we have started some internal work on ETD reporting in the last few weeks, since we understand and recognize that there are still a number of questions to address that merit regulatory attention.

ESMA has met BBA, ISDA, FoA and many other stakeholders, at several stages (pre-Discussion Paper, after the Consultation Paper responses, and in the latest months on implementation). We will be pleased to meet you again and receive your input on the suggested topics, before the entry into force of EMIR technical standards, in order to investigate any possible measure that may be taken to properly implement the relevant provisions of EMIR.

Yours sincerely,



Rodrigo Buenaventura
Head of Markets Division