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ISDA response to the ACER's consultation on technical requirements for data reporting under REMIT.

On behalf of its members, the International Swaps and Derivatives Association (ISDA) takes the opportunity to comment on the ACER consultation paper on technical requirements for data reporting under REMIT.

ISDA has supported the Regulation on Energy Market Integrity and Transparency (REMIT) as it should result in a more level playing field between commodity market participants, will prohibit market abuse and thus enhance market integrity.

ISDA members broadly welcome steps towards increased convergence between financial and non financial regulation on the prevention of market abuse and particularly the misuse of inside information.

An appropriate data and transaction reporting framework is a key element for the success of this regulation as well as coordination with reporting that is or will be applied under financial pieces of legislation – EMIR, MIFID/ MIFIR, MAR/MAD and the Dodd Frank Act in the United States.

We would like to draw ACER's attention to some specific comments that ISDA and its members consider to be of particular importance:

- **Alignment of data reporting process under EMIR and REMIT is crucial.** In this respect, on the format and standards that ACER should recognise for reporting, it is critical to use the same legal entity identifier as in EMIR. In this respect we underline that 'orders to trade' are not included in the scope of reporting EMIR whereas it seems that, in the ACER's consultation paper, they have to under REMIT. Due to the gap between the two reporting processes, market participant call for reasonable time schedule for compliance with these two systems.
- **Avoidance of duplicative reporting.**
- **Product Identification.**

Consultation - Questions

On the Standards and formats for reporting

- I. Do you agree that for the reporting of energy derivatives, the same standards applicable to the values taken by each field of information should apply under REMIT as under MiFID and EMIR? (For example ISO Currency standard identifiers for Currency information, ISO Country Codes for Country information, etc.).***

As a general matter, ISDA supports full transaction-level transparency to the regulatory authorities both from a systemic risk monitoring perspective, as well as for market abuse detection purposes. However, we would highlight the need for clear and unambiguous standards and guidance to be developed, in consultation with the industry, which will ensure that data collected is accurate, meaningful and in a form which can be utilised effectively by the authorities and that duplicative regime are avoided. The requirement to ensure that reporting under EMIR fulfills the reporting requirements under REMIT is essential to avoid unnecessary burdens on market participants. In this regard ISDA would be interested in contributing to the discussion and to provide views on how such consistency should be ensured.

It is essential that there is full alignment of definitions and reporting between REMIT and EMIR and Market Participants should be able to submit all the required information only once to a trade repository, which would in turn feed both ACER ARIS and ESMA trade repositories. Market participants should be able to switch between the two in order to fulfil reporting requirements. It would therefore be helpful for ACER to give a clear direction on this matter as soon as possible allowing Market Participants to accurately select Trade Repository under EMIR who will also be registering as an RRM under REMIT.

- II. What single standard and single format do you think the Agency should recognise:***
- a. For reporting of transactions from organised market places that are exchanges***
 - b. For reporting of transactions from organised market places that are not exchanges***
 - c. For reporting of transactions through confirmation services***
 - d. For reporting of electricity nominations / scheduling***
 - e. For reporting of gas nominations / scheduling***

The reporting standards should be calibrated for specific transaction types and OTC derivatives should be viewed in this context. In a further effort to reduce the burden on market participants, ISDA has been very active working with its members over the last couple of years to assist the industry with designing and implementing reporting frameworks to comply with various areas of financial regulation across multiple jurisdictions. Given this work we would encourage ACER to avoid creating additional requirements related to the process of reporting. We recognise that there may not be a single solution that is optimal for all market participants and suggest that flexibility be retained provided the end output satisfies the requirements of legislation. Many firms who will be required to report under EMIR and REMIT have built or are in the process of building functionality that allows them to comply with legislation in other jurisdictions and we would encourage ACER to recognise reporting mechanisms that leverage this work. Data repositories have been, or are currently being developed, and we would recommend that ACER engage with these organisations and industry to determine a suitable way to access the information contained therein.

For the purpose of reporting of electricity nominations (point d.) and of gas nominations (point e.), ACER should provide further clarification regarding the reporting of nominations. We believe that all the information required by ACER would be contained in any transaction information being reported.

III. The Agency has identified a set of common standard codes which it proposes being used in the new reporting framework (see Annex I). Do you think these standards are the relevant ones?

ISDA welcomes the fact that ESMA and ACER have worked and will continue to work closely to ensure that the standards adopted under EMIR satisfy the reporting requirements under REMIT. We believe that there should be consistent reporting requirements under different areas of financial regulation and furthermore strongly encourage authorities responsible for implementing rules to fully and openly engage with ISDA, its members and other organisations that represent market participants. Particular attention should be given to an appropriate alignment of the trade data fields and reporting formats required under EMIR and REMIT. There should be either a full convergence/reciprocity of reporting formats or the REMIT data fields should form a subset of the EMIR data fields in so far as a market participant should be able to submit all required information only once to a trade repository. We would also strongly recommend that market participants should be allowed to choose to which approved data repository they supply the required data, regulators should then draw data from all approved repositories across all pieces of legislation and aggregate accordingly.

The common standard codes in Annex I support the standards adopted in EMIR and we would support the use of any additional common standard codes where possible.

IV. If a format is recognised by the Agency, what governance provisions should the Agency require to ensure the quality persists?

ISDA highlights that REMIT states that market participants are obliged to register only if they are required to report.

If they have to register, then ISDA believes that Wholesale Energy Market participants or the entities acting on their behalf to provide the data reporting, should be registered with the National energy regulator (NRA) who has the responsibility to enforce REMIT legislation. Registration under the NRA should require them to report to ACER on the market activity which is captured under REMIT. Third parties who have to report should also be registered persons. Governance should be established to ensure that third parties have the capacity to manage the reporting on behalf of market participants in terms of systems, audit trail, finances and control and oversight. Further work is necessary to define the certification requirements for RRM established by market participants and third party RRM. It is therefore crucial that ACER and the EU Commission accelerate the process for defining the RRM certification framework and requirements.

V. Do you have comments on these standards?

Given the interconnected nature of the financial and physical wholesale energy markets, as well as the existence of multiple regulatory authorities across Member States, we see strong coordination (including appropriate information sharing) between all the authorities, including ESMA and ACER, as fundamental to the success of enhancing market cleanliness standards across the EU.

ISDA supports a multi-channel approach to reporting data to ACER, as specifically foreseen by REMIT, and therefore considers market participants should be allowed to either report themselves or designate third parties to report on their behalf., it is of utmost importance that market organising party uses the compatible reporting process, data content and technical communication standards. We welcome the requirements in REMIT for ACER to consult with the other authorities before establishing mechanisms for processing information and to pay special attention to safeguarding the information's confidentiality and security.

VI. What are the practical implications of the use of these standards and formats for the energy industry?

Adopting standards and formats that are aligned with EMIR and MiFID will reduce the administrative burden on Market Participants and should reduce the costs by having an RRM and Trade Repository under the same umbrella. ACER will need to provide clear timelines for implementation to allow market Participants who do not have any reporting obligations under EMIR and are not part of larger energy trading organisations to report.

VII. Are there other formats and standards the Agency should consider for recognition?

ACER should leverage work already being undertaken by the industry to develop data reporting conventions in response to requirements under the Dodd-Frank Act and EMIR.

On the taxonomy

VIII. Do you think that the taxonomy proposed in Annex II is the relevant one?

ACER should leverage work already being undertaken by the industry to develop taxonomy conventions in response to requirements under the Dodd-Frank Act and EMIR. This is an area where global standardisation is extremely important, development of a specific taxonomy convention to satisfy REMIT implementation would be highly inefficient and costly.

The OTC derivatives industry working through ISDA has developed a product taxonomy (the "ISDA Taxonomy") which provides for a classification of OTC derivative products across the 5 main classes of derivative, including namely Commodities. Use of this taxonomy where appropriate has implementation benefits as it has already been implemented as a standard used by firms and trade repositories alike. Endorsement by ACER, as satisfying the requirements for identification of Derivatives for OTC under REMIT, would ensure global consistency and standardisation of regulatory reporting output.

However, we recognise that ACER may have further questions regarding the use of the ISDA Taxonomy and its suitability for providing all of the necessary information and therefore we remain eager to establish an open dialogue with ACER to discuss particular issues relating to this and other reporting related requirements.

We feel the taxonomy is very power focused and needs to include more criteria relating to natural Gas and include LNG storage as that is covered by REMIT

IX. Do you think the first criteria on the delivery market (as country) should rather be the delivery zone or bidding zone?

Delivery point should be zone rather than country for two reasons:

- It is more accurate from a monitoring perspective as zones within a country eg. Germany for power can have quite different market characteristics; in other words, there may be multiple markets in each country with different characteristics
- Also, the Capacity Allocation and Congestion Management Network Code suggest that we may see more countries create pricing zones within their national grids. It is therefore better to start reporting at zone level than have to change from country to zone level at a later stage.

X. Does the taxonomy represent your view of the structure of the wholesale energy markets relevant to REMIT? For each dimension, are the categories given exhaustive? If not, please offer suggestions.

ISDA broadly supports the proposed dimensions for the taxonomy but would like to highlight the following points:

- On energy product type (2.), the taxonomy should include LNG;
- On duration (5.), the taxonomy should include quarters, day ahead and with-in-day;
- On profile type (6.), the taxonomy should include interruptible and exclude week-ends.

XI. Should Regulated Information (Transparency/Inside Information) be categorised using at least the first two criteria of the taxonomy?

Yes, we believe regulated information can be categorised by at least using the “delivery market” and “Energy product type”.

However, we think that Transparency/Inside Information needs to include a lot more detail than only delivery point and product but the other parts of the taxonomy are not relevant to this sort of disclosure, which would most often be related to physical assets eg. power station outage etc.

This seems like a practical approach ACER will need to clarify that this will be required for all disclosures of transparency/ insider information whether made on a RIS on the companies own website.

XII. Would you suggest any simplifications or additions to the taxonomy?

ISDA does not think it is necessary to include the definition ‘spread’ as most vanilla spread trading is generally booked as the individual legs. As such, is not easy to identify as a spread trade in risk and booking systems

ISDA believes that ACER has not provided sufficient information to enable the Commission to set the list of contracts and orders to trade that have to be reported. Then ACER does not provide sufficient information for Market Participants to assess the Technical Standards.

ISDA also believes that the technical requirements around reporting must also be clearly defined and detailed guidance for issues such as reporting deadlines and frequency requirements and also reporting hierarchies if transactions are being reported by Grids or Exchanges.

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