13th May 2014

Letter to:

ESMA Post Trade Standing Committee, ESMA

Re: Challenges for EMIR Reporting – Post Go Live Update

Following the start of reporting on February 12, we would like to provide you with an update regarding the issues previously raised to the extent progress has been made, and highlight two new post go live questions.

ISDA[1], BBA[2] and their members continue to recognise the importance of reporting and the prudential oversight benefits it brings to the markets and users at large. A key part of our mission, is supporting our members towards full compliance with the reporting requirements on a global basis. We acknowledge and welcome the efforts of ESMA and National Competent Authorities ("NCAs") in providing direction and clarification to the industry through formal Q&As and direct interaction over recent months.

Our letters dated 28th October 2013 and 10th February 2014 provided insights into many of the challenges faced by industry participants in their preparations for reporting go-live. Progress has been made on some as described in annex 1 to this letter, but some issues remain outstanding.

Feedback from the inter Trade Repository (TR) reconciliation process is a key component needed to develop solutions and plan the implementation through an industry agreed roadmap.

Once the information is made available we will develop a roadmap with a goal to assure completeness and further improve the quality of the data.

[1] **About ISDA**

Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

[2] The British Bankers' Association (BBA) represents more than 240 organisations, including more than 170 banks and 70 Associate member firms. Our member banks make up the world's largest international banking cluster and contribute over £50 billion annually to European economic growth. Our members, whilst predominately banks, engage in activities which range widely across the financial spectrum, encompassing services and products as diverse as primary and secondary securities trading, insurance, investment advice and wealth management, custody, as well as conventional and non-conventional forms of banking.

As mentioned, Appendix 1 contains an update on some of the issues raised previously. A copy of the original list of issues and pre go-live updates are attached as appendix 2 and appendix 3 respectively. However, we would first like to draw your attention to the following issues:

1. Updating Reports Retrospectively

   On occasion a trade report may contain an erroneous value. Whenever this occurs and if subsequent events have been reported on the same trade, the industry approach is to focus on correcting the current state position of the trade and ensure correct reporting going forward. We believe that updating historical reports on a consistent basis provides little value compared with the huge cost required to amend the existing infrastructure, including TR infrastructure, to allow for such reporting. Where needed and requested by their regulator, institutions will provide such reports on an exception basis. This approach is consistent with the current reporting practice in other jurisdictions.

   Furthermore, there may be instances where a trade is terminated before it has been reported, in such instances the industry proposes that the first report will be in the terminated state, i.e. reported with an Action Type of C (cancel).

2. Backloading Matured Trades

   Contracts that were open on 16th August 2012 or opened after 16th August 2012, but closed before the 11th February 2014 ("Matured Trades") need to reported within the next three years as outlined in the EMIR RTS.

   Taking guidance from Q&A TR 4c (*"To the extent that a backloaded contract is still outstanding at the time of reporting, a Trade-ID needs to be agreed between the two counterparties and reported, together with the other information on that contract")* firms do not intend to pair UTIs for these instances of Matured Trades. Industry would welcome endorsement of this approach.

In order to address the new challenges listed above and those updated in Appendix 1 ISDA, BBA and their members firmly believe that it would be beneficial for the industry, through trade associations, the TRs and the regulatory community to work together to identify and agree solutions. It is unlikely that these sectors working in isolation would identify workable solutions quickly. Therefore, we suggest a series of in person roundtables where updates can be provided, the views of the various stakeholders can be shared and issues prioritised and addressed in a collective manner.

We would welcome the opportunity to work with the ESMA Market Data Reporting Working Group on this in order to develop solutions and agree on timelines for orderly implementation.

Yours Sincerely,

George Handjinicolaou
Deputy CEO and Head of ISDA Europe,
Middle East and Africa

Sally Scutt
Deputy CEO
BBA

## Appendix 1

Underlyers

We welcome the guidance provided by ESMA through the Q&A TR 20 and TR 28 which clarifies how to report in cases where the underlying value field is not available or not relevant. Firms continue to review and adopt this guidance throughout their reporting.

As further described in the product identification section, up to the reporting start date the industry had been anticipating to use the UPI for describing the underlyer in certain cases. In this regard we submitted the ISDA taxonomy/UPI proposal, which is used for reporting in most other jurisdictions, to ESMA and following feedback from the ESMA Market Data Reporting Working Group, we proposed a set of changes to the taxonomy and UPI to accommodate the requests. The lack of any UPI endorsement means that UPI – one of the six values allowed by the RTS – is currently not available to describe the underlyer. As a result, providing a compliant underlyer value for all trades is a challenge. In particular as underlyer values such as Red and RIC codes which are typically used by the industry and which are leveraged for reporting in other jurisdictions are not allowed by the Technical Standards. To resolve this issue in the most efficient and expedient manner, some firms are working with their chosen TR(s) to develop a mechanism to provide a compliant value from existing infrastructure. Until this solution is delivered there will continue to be some gaps in the reported underlyer value. Where this applies firms should be transparent with their NCA.

Furthermore, the industry continues to analyse their reporting for instances where the available values for underlyers are insufficient to allow accurate reporting and ISDA will revert to ESMA for clarification through the Q&A process as necessary.

Product Identification

We welcome the guidance provided through Q&A TR 21 regarding UPI. We also understand that ESMA will further consider its approach to UPI. We welcome any alignment with international discussions around product identifiers but urge regulators at the same time to move forward. We very much stand available to participate and contribute to any UPI discussions and believe that the current ISDA proposal on UPI still provides a valuable starting point, in particular with the proposed revisions to the taxonomy to provide additional granularity. Although we note at this time ISDA does not intend to publish a revised Taxonomy reflecting the additional granularity until there is further clarity from ESMA.

UTI Exchange

Despite guidance under TR 18 of ESMA's Q&A there continue to be challenges to timely generation and exchange of UTI.

As documented in our previous letter, absent the endorsement of the UTI Whitepaper, the ISDA proposed mechanism for determining the generating party and subsequent exchange of UTI remains a best practice and industry participants may choose to follow alternative approaches. Although the scale of the issue is not yet quantifiable due to issues with the inter-TR reconciliation process early indications show that UTI pairing of trades is lower than forecast.

The industry is committed to fulfil both the EMIR requirement of a single UTI reported by both counterparties that will work in parallel with a global UTI that can be reported across jurisdictions. ISDA's proposed approach establishes a structure that provides order to this process without being absolutely prescriptive, i.e. firms can still choose an alternative approach through bilateral agreement. However, it is the industry view that to encourage adoption of this approach endorsement by ESMA is necessary. We would welcome guidance from ESMA on how to achieve this endorsement.

Furthermore, we would suggest that any requirement for the industry to migrate to an interim solution for UTI construct as indicated by Method 4 of TR Answer 18 in the latest Q&A will increase cost and not have any tangible benefit from a data quality perspective. We would request that the right approach should be to agree a global solution and require only one transition to that solution once it is agreed. We would welcome ESMA endorsing this as the strategic approach to resolving some of the current issues.

UTI for Cleared Trades

ISDA would welcome clarification on the reporting of OTC cleared trades. ESMA has provided some guidance for ETD through ETD Reporting Answer 2 in the Q&A however there has not yet been any industry wide guidance provided for OTC. Indeed there appears to be inconsistency between global regulators which creates issues for industry infrastructure, firms reporting models and global data aggregation.

We understand that CCPs have been advised by ESMA to report all OTC cleared trades assuming they were executed under a Principal Model irrespective of whether they were executed under a Principal or Agency model, i.e. the CCP will always report the trade between itself and the Clearing Member (CM) with one UTI, the CM will then need to report the trade between themselves and the Client with a different UTI. Whereas for CFTC reporting trades are always reported under an Agency Model, i.e. the CCP reports the trade between itself and the Client with a single USI. This creates issues where a cross jurisdictional trade has been executed under an Agency model as follows:

- A CCP will need to report the same trade differently depending on the jurisdiction it is reporting to.
- Under CFTC the trade will be reported between the CCP and the end Client and assigned a single USI
- Under EMIR the same trade will be reported between the CCP and the CM (both parties having a Reporting Obligation) and assigned a UTI which is the same as the USI used for the CFTC report. Indeed this is a misnomer as there is no legal trade between these two parties under an Agency style execution. Both the CM and the Client will have a Reporting Obligation to report an additional trade between them with a new UTI.

This means that the same Trade Identifier (USI/UTI) will show different trade participants for the 2 jurisdictions.

ISDA suggested the approaches to be used for each of these scenarios under Section 4.3 of its UTI Whitepaper; such approaches appear to be consistent with the guidance provided for ETD. We would encourage ESMA and the NCAs to review the Whitepaper and provide clear industry guidance on the reporting of cleared trades that reflects the legal relationship of trades within the cleared environment.

We would also encourage ESMA to continue their work with the CFTC to agree a consistent global approach for reporting of cleared trades that reflects the specific execution model (i.e. Principal or Agency) of the trade in question.

Identification of Counterparties

While we understand that many of the delays to LEI issuance observed immediately before the Reporting Start Date as noted in our previous letter have been resolved there remain a number of reasons why it is not possible for firms to report an LEI value for every trade for which one would be expected. We have previously communicated industry concerns around data privacy and this is one such reason. However, post go-live, industry participants have observed additional instances where a LEI cannot be provided including the following:

i. Some instances where a party faces a client who is an individual operating its own business. It would appear that in some jurisdictions such clients have been unable to obtain a LEI and therefore both parties to the trade are unable to comply with EMIR requirement to report counterparties using a LEI. We would welcome direction on how to proceed in these instances. In the interim firms will identify their counterparty through alternative compliant identifiers as per the Technical Standards.
ii. We are aware that in some cases firms are approaching the anniversary of their LEI registration and therefore are required to re-register. It would appear there are instance where such re-registration has not occurred and therefore previously valid LEI’s are no longer valid. This creates issues and challenges for firms and TRs alike. ISDA and its members will continue to educate clients on the requirements for LEI and indeed the need to keep the LEI current and valid. We would welcome communications from NCAs instructing similarly.

Block Trades

There continues to be confusion around the requirement for a block trade to be reported.

A block trade represents the simultaneous, aggregated execution, via an agent investment manager, of the individual orders of more than one client, the end-result of which is each client contracting with the same counterparty dealer. Once the transactions are executed in this way, at block level, the investment manager can then ‘allocate’ the contracts to the individual client counterparties. The reason for aggregating the individual orders into a single block for execution purposes is to establish the clients’ individual trades in the most price-efficient way. The investment manager is thus not a counterparty to any trade and, as such, can have no obligation to a trade repository report under EMIR.

Notwithstanding this clear legal position, we are aware of some NCA interest in whether a block trade should be reported as a single trade by an investment manager, which caused some confusion and concern in the market. ISDA would therefore welcome formal guidance on the subject from ESMA to clarify that only the allocations (i.e. the individual contracts between the dealer and the investment manager's clients) are reportable.

Upon receipt of this guidance it should be noted that where firms have developed a reporting infrastructure that is inconsistent with this approach it may require some time to re-engineer this infrastructure to ensure all industry participants are reporting consistently.

Data Privacy

The data privacy issues described in our letter from February 10, are still very much a concern which we would like to discuss further with the regulators.