10th February2014

Sent by email to members of the ESMA PTSC

Re: Challenges for EMIR Reporting – Update

We welcome the opportunity to provide you with an update on industry preparation for implementation of the reporting obligation under EMIR.

ISDA and its members continue to recognise the importance of reporting and the prudential oversight benefits it brings to the markets and users at large, and views as a key part of its mission, supporting its members towards full compliance, and assisting in any way possible therein. 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.

We note our previous letter (the "Original Letter") providing an insight into some of the challenges faced by industry participants as they prepare for the Reporting Start Date ("RSD") on 12th February 2014. We would like to provide an update on some of these challenges reflecting information gathered by the industry as it prepares for the RSD through testing cycles with Trade Repositories. Furthermore, such activities combined with discussion among industry participants, including Trade Associations, are causing additional challenges to be identified. We would like to take this opportunity to share these issues with you.

In appendix 1 attached, we have provided an update on each of the issues advised previously. A copy of the original list of issues is also attached as appendix 2. However we would like to first draw your attention to the following additional challenges identified since the Original Letter:

1. Backloading:
   Industry participants are using best efforts to try and backload all relevant historic transactions in advance of the RSD. While we acknowledge that it is not necessary to back load those transactions that were outstanding on 16th August 2012 until 90 days after the RSD the benefit of back loading all open trades in order to facilitate reporting of post RSD events on these transactions should not be underestimated. The issue however, is that all of the challenges described in our Original Letter where they continue to exist will also apply to the population of trades that need to be back loaded. Furthermore, the necessary effort to agree all of the Common Data fields with all counterparties makes the exercise of reporting paired data, and in particular UTIs,

extremely challenging. We anticipate that there will be a significant number of unpaired trades in the historic population as of the RSD.

2. Delegated Reporting:

Many dealer firms at the request of their clients and in the interests of effecting an efficient implementation of EMIR reporting have developed solutions to support delegated reporting. However, this raises a number of concerns as follows:

i. These solutions leverage a dealer's own reporting infrastructure. Therefore, where a dealer's reporting may not be deemed 100% compliant any such deficiencies will be translated into a client's reports,

ii. Clients will have to make their own decisions as to whether any delegated reporting solution appropriately satisfies their reporting obligation. However, if individual regulator's communications are inconsistent in terms of the minimum standard expected as of the RSD, as well as regarding remediation timeframes, we are concerned that this could influence their determination in this regard and cause a client to change their trading pattern and choice of counterparty for the wrong reasons,

iii. Moreover, we fear there is a risk that as a result of some of the industry wide challenges a client may determine that their reporting obligation cannot by fully met and therefore refrain from trading altogether. We do not believe that this is compatible with the objective/principle of market efficiency or indeed the intention of the legislation.

3. Data Privacy:

The industry recognises and appreciates the work done by ESMA and other authorities to resolve ongoing issues of data confidentiality, including the inclusion of Article 9(4) of EMIR that addresses this issue for parties reporting data related to their counterparty that is based in another EU member state. However, it is not clear that the provisions of Article 9(4) protect parties where their counterparty is based in a non-EU jurisdiction that has strict data privacy laws. We recognise that in some cases it is possible to obtain consent of a counterparty in order to report their data and where this is permissible firms are working either bilaterally or multilaterally (i.e. through ISDA's Reporting Protocol) to gain such consent. However, there remain a number of jurisdictions where legislation may not permit, and indeed may expressly prohibit, disclosure of client data, even when the client has given express consent (contractually or otherwise) to such disclosure. Therefore, as of the RSD and absent any further guidance, firms will make their own internal determination as to whether it is legally permissible to report certain client trades and/or may mask a specific report accordingly. This determination to mask may include instances where consent would be appropriate but such consent has not yet been obtained. Firms will aim to rectify this as soon as feasibly possible.

As mentioned previously, we would welcome the opportunity to work with you post RSD to further develop solutions and agree on timelines that facilitate an efficient implementation and ultimately full compliance with the reporting rules prescribed under EMIR. To the extent that it is possible to meet with you individually or as a group, including ESMA, we would very much appreciate that opportunity.

We remain at your disposal should you have any further questions and look forward to hearing from you.

Yours sincerely,

George Handjinicolaou
Deputy CEO and Head of ISDA Europe, Middle East and Africa
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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 62 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.