

6 July 2015

ACER

Agency for the Cooperation
of the Energy Regulators
Trg republike 3
1000 Ljubljana, Slovenia

Submitted by email to: remit@acer.europa.eu

Questions to ACER on REMIT Implementation

Dear Sir/Madam,

With the reporting start date under REMIT imminent, GFMA¹ Commodities Working Group (GFMA CWG) and ISDA² members are concerned that there are still a number of points regarding the REMIT reporting regime which have not yet been clarified through either the TRUM or ACER's FAQs.

We have set out in the letter below a summary of the key points together with the interpretation of the issues or requests for further guidance or clarity. If our understanding of any of these issues is incorrect, we would ask ACER to issue further guidance or clarification.

1. REPORTING ARRANGEMENTS

A. Requirement to offer a data reporting agreement

We would welcome clarification on the scope of the obligation under Article 6(1) of the REMIT Implementing Acts for Organised Market Places to offer a data reporting agreement “at the request of the market participant”.

¹ The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit www.gfma.org. GFMA is registered on the EU Transparency Register, registration number 898223513605-51.

² International Swaps and Derivatives Association (ISDA). Since 1985, ISDA has worked to make the global OTC derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 67 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.

It has come to our attention that some OMPs are requiring all market participants who enter into transactions in wholesale energy products on their platforms to enter into data reporting agreements and report those transactions only through that OMP as they understand that this is a requirement under REMIT.

We consider that Article 6(1) of the Implementing Acts clearly requires OMPs to offer a data reporting service, but does not require (or permit) OMPs to prevent market participants from reporting via other channels. Therefore, we understand that market participants have the choice of reporting through an OMP or through a trade matching system or trade reporting system.

On a more general point, we note that there is the possibility that some duplicative reports may be made if market participants are already reporting transactions under EMIR which are also reported by OMPs under REMIT.

2. SCOPE OF THE REPORTING REGIME

A. Territorial Scope

In line with the REMIT Implementing Acts (“IA”), we understand that Market Participants have to report information about orders and transactions in relation to:

- **Standard contracts:** the contracts included in the list published by ACER on its website³ (art. 3(2) IA);
- **Non-standard contracts:** the types of contracts included in art. 3 IA which relate to “the supply of electricity and natural gas with delivery in the Union” (art. 3(1)(a)) and “to the transportation of electricity or natural gas in the Union” (art. 3(1)(b)).

If our interpretation is incorrect, we would ask ACER to issue further guidance or clarification.

B. Contracts/Events

It would be useful if ACER could clarify whether particular types of contracts or events are within scope for the reporting regime, along the lines of the Q&A published by ESMA in relation to the reporting obligation under EMIR. In particular:

- **Lifecycle events for exchange traded derivatives (ETD)**

The TRUM states that there are two categories of lifecycle events reportable under REMIT: (a) lifecycle events related to trades and (b) lifecycle events related to orders to trade.

We understand from our previous engagement with ACER that lifecycle events for exchange traded derivatives are not reportable.

³ <https://www.acer-remit.eu/portal/standardised-contract>

We would welcome formal confirmation of this from ACER through Q&A, guidelines or an amendment to the TRUM.

- **LNG transactions**

We would welcome further clarification in relation to LNG transactions.

We would ask ACER to confirm whether or not LNG transactions are included in the definition of "wholesale energy products" and therefore reportable under Article 8(1).

- **Physical trades booked as a result of an option/swaption**

We understand that transactions that result from the exercise of an option or swaption are not considered to be "transactions" for the purposes of REMIT, as ACER considers that "transaction" should be interpreted in line with Article 5 of the MiFID Implementing Regulation, which states that the purchase or sale of a financial instrument does not include the exercise of options or covered warrants.

As a result, we understand that where a market participant enters into a physical trade as a result of an option or swaption (e.g., where a market participant has purchased an option to buy a quantity of electricity or natural gas, exercises that option and buys the relevant electricity or natural gas), that physical trade would not be considered to be a separate trade reportable under REMIT, nor would it be treated as a lifecycle event in relation to the original option or swaption.

This approach is confirmed in the TRUM (on page 25, third paragraph⁴) which states that there is no reporting obligation under REMIT in relation to the exercise of options. We understand that this means that there is also no reporting obligation under REMIT in relation to transactions resulting from the exercise of options.

- **Compressions: (a) full compressions; (b) partial compressions; (c) new trade resulting from a partial compression**

We also understand that transactions that result from portfolio compression are not considered to be "transactions" for the purposes of REMIT. Although portfolio compression may result in the creation of a new derivative transaction, portfolio compression is conducted for operational and risk reducing purposes (and may be required to be conducted in accordance with EMIR). We do not consider that reporting of portfolio compressions would assist ACER or national competent authorities in monitoring abuse of EU wholesale energy markets. We consider that

⁴ "Market participants should note that reporting of lifecycle events under REMIT may differ from lifecycle events reporting under other EU legislations. In fact, the following are not expected to be reported under REMIT as they are not activities related to the execution or modification of a transaction entered into a wholesale energy market: confirmation, compression, settlement (pre-settlement, excluding early termination, and/or post-settlement activities), notional increase / decrease (relative to commodity index transactions including derivatives), clearing or option exercise."

these additional reports may in fact hamper the ability of ACER or national competent authorities to identify market abuse, as requiring market participants to report portfolio compression activity will generate a large number of reports which will not be relevant to identification of possible abusive behaviour.

This approach is confirmed in the TRUM (on page 25, third paragraph⁵) which states that there is no reporting obligation under REMIT in relation to portfolio compression. We understand that this means that there is also no reporting obligation under REMIT in relation to transactions resulting from portfolio compression.

- **Novations**

In relation to novations, we note that the TRUM states that these should be reported as a modification to the original transaction.

Although we can see the logic for ACER's approach, this reporting method is inconsistent with the reporting of novations under EMIR, and we think that this reporting method may not always be workable. Under EMIR, the approach is for the step-in party to report the novated transaction as a new trade and the step-out party to cancel the previous trade.

Furthermore, we do not consider that novations of contracts traded on an OMP should be reportable from Phase 1 of the REMIT reporting regime implementation (i.e., from 7 October 2015). We consider the novation as a new trade that is executed outside an OMP and, should therefore be reported only from Phase 2 (i.e., 7 April 2016).

- **Order Information Requirement**

As mentioned above, we understand from RRM that market participants are being required to report order information in all their reports under REMIT, including transaction reports and modifications to existing reports to reflect lifecycle events.

Recital 5 to the Implementing Act indicated that, since market participants cannot be expected to record order information with ease, matched and unmatched orders should be reported through the OMP where they were placed. However, if market participants are required to provide order information with every report or modification of a report that they submit, they will need to be able to source order information themselves.

We would welcome clarification from ACER that market participants will not be required to provide information on connected orders every time they submit a transaction report or modification of a transaction report under REMIT.

⁵ See previous footnote.

- **Voice Orders**

In relation to voice orders, we consider that Market Participants should rely on OMPs in order to source voice order information if requested by the Agency. As recognised by ACER, we believe that the OMPs are the golden source of order information.

C. Format

- **Notional calculation**

We do not consider that the calculation for the notional amount set out in the guidance on data field 38 in the TRUM reflects the calculation methodology for notional amount under EMIR. It would be helpful if ACER could align the calculation methodology with that under EMIR.

- **Contract ID**

We would suggest that ACER adds the Exchange Code for each Standard Contract to its list of Standard Contracts information. These codes are commonly used by market participants to identify the various contracts and would assist in avoiding any potential ambiguity.

- **UTI**

We would encourage ACER to provide a UTI algorithm as soon as possible and also to clarify whether this algorithm will apply to OMP generated UTIs for contracts reportable from 7 October 2015.

Yours faithfully,



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