Response form for the Consultation Paper on ESMA's Guidelines on position calculation under EMIR

15 November 2017

European Securities and Markets Authority

Date: 15 November 2017

Responding to this paper

ESMA invites responses to the questions set out throughout this Consultation Paper. Responses are most helpful if they:

1. **respond to the question stated;**

2. **contain a clear rationale; and**

3. **describe any alternatives ESMA should consider.**

ESMA will consider all responses received by 15 January 2018.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

4. **Insert your responses to the questions in the Consultation Paper in the form "Response form_Consultation Paper Guidelines EMIR.docx", available on ESMA's website alongside the present Consultation Paper (www.esma.europa.eu → 'Your input – Open consultations' → 'Consultation on ESMA's Guidelines on position calculation under EMIR').**

5. **Please do not remove tags of the type <ESMA_QUESTION_EMIR_1>. Your response to each question has to be framed by the two tags corresponding to the question.**

6. **If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.**

7. **When you have drafted your response, name your response form according to the following convention: ESMA_ EMIR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_EMIR_ABCD_RESPONSEFORM.**

8. **Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading 'Your input – Open consultations' → 'ESMA's Guidelines on position calculation under EMIR').**

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly indicate by ticking the appropriate checkbox on the website submission page if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with

ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu **under the heading 'Data protection'.**

Who should read this Consultation Paper

This consultation paper may be specifically of interest to trade repositories (TRs), trade associations and relevant entities defined in Article 81(3) of Regulation (EU) No 648/2012.

General information about respondent

Name of the company / organisation	Association of the Luxembourg Fund Industry (ALFI)
Activity	Other Financial service providers
Are you representing an association?	☒
Country/Region	Luxembourg

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_EMIR_1>

The Association of the Luxembourg Fund Industry (ALFI) is the representative body of the Luxembourg investment fund community. Created in 1988, the Association today represents over 1,400 Luxembourg domiciled investment funds, asset management companies and a wide range of service providers such as depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax experts, auditors and accountants, specialist IT providers and communication companies. The Luxembourg Fund Industry is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg-domiciled investment structures are distributed in more than 70 countries around the world.

We thank ESMA for the opportunity to participate in this consultation on EMIR position calculation.

<ESMA_COMMENT_EMIR_1>

1. **: Are there any other definitions related to the reporting of derivatives under Article 9 of EMIR that need to be taken into account to ensure the guidelines are clear? Please can you elaborate on the reasons for your answer.**

<ESMA_QUESTION_EMIR_1>

Based on our understanding, we are in the view that the objectives and stakes of the guidelines should be developed in order to better understand which precise type of authority needs which kind of new output and for which purposes in 2018.

Guidelines could clarify specific cases for the population of dates so the market uses all dates in a consistent way. This will allow for the creation of consistent data across all market participants in different jurisdictions and for different product types. This will facilitate matching and ensure consistent reporting across the market. For instance regarding certain currency options where the effective payout only takes place after the expiry of the contract, which typically has a lifecycle of a limited number of days only.

Article 9 of EMIR is useful to have an overview of the reporting obligation, but ESMA EMIR Q&A is an essential piece to take into account for a proper understanding of EMIR implications. The latest issue of 14 Dec. 2017 is adapted to the new reporting framework entered into force on 1 Nov. 2017.

<ESMA_QUESTION_EMIR_1>

2. **: Do you agree that using trade state reports is the most effective way of ensuring that the information used to aggregate derivatives is current and useful for authorities? Please can you elaborate on the reasons for your answer.**

<ESMA_QUESTION_EMIR_2>

Trade state reporting provide the most accurate level of detail at trade level. In their own jurisdiction, NCAs can review the contained data to ensure fields are populated in a consistent way by all eligible counterparties.
Moreover, based on these data, National and European authorities can design aggregation queries under specific dimensions, depending on their respective needs.

National authorities will most likely prefer queries in relation with local business models whereas European authorities will probably prefer consolidated exposures.

<ESMA_QUESTION_EMIR_2>

3. **: Do you agree with Guideline 4 and the use of Effective date (T2F26) to determine which derivatives should be included in a calculation? Do you see there being an alternative approach to better ensure that relevant derivatives which are effective are those included in a calculation. Please can you elaborate on the reasons for your answer.**

<ESMA_QUESTION_EMIR_3>

The derivatives to be included in the calculation are the outstanding trades included in the latest trade state. TRs should include all the open trades and exclude those that have been either terminated or cancelled in their calculation. Use of field #93 “Action type” looks appropriate for this selection.

Therefore the effective date will not help to identify them. The *Effective date* corresponds to the start date of a contract, and can be combined in a later stage with the field #32 *Confirmation Timestamp* to filter on the contracts that have been confirmed effectively.
As noted earlier, it will be important that the use of dates is standardised across the European Union, and clear use cases are established regarding the population of the effective date field under different transaction configurations.

<ESMA_QUESTION_EMIR_3>

4. : Do you agree that the proposed Guideline 6 and Guideline 7 will ensure consistent reports are made available by TRs? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_4>

The question deals only with 2 criteria: the direction of the trade (Buy/Sell) and the 2 main amounts (Notional, and MTM).
It is a relevant initiative to use them, as there combination represent the valuation of the risk. Indeed, as the sell-side of the trade carries the given commitment, when isolated it allows to qualify the counterparty risk to consider.

These information are already exploited by most of National Competent Authorities (NCAs).

<ESMA_QUESTION_EMIR_4>

5. : Do you agree with the proposed frequency for updating position calculations and making them available to authorities? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_5>

It makes sense to complete a position calculation on the same day trade state data are published by TRs. TRs can perform daily calculation. However, more clarity about the frequency of the report would be welcome to assess the impact. The frequency calculation could be weekly, as a daily process appears burdensome and would probably not be sufficiently exploited.
The calculation process should be supported by consistent cut-off guidelines applicable across the TRs detailing when a transaction declared by a reporting counterparty is actually treated by CCPs/TRs and ESMA Trace Hub downstream.

<ESMA_QUESTION_EMIR_5>

6. : Do you agree with Guideline 9 and the use of the ISO 20022 XML template and these standards for TRs providing access to positions? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_6>

Yes. TRs already have experience with the format ISO 20022 and the use of the format ISO 20022 is beneficial since it becomes standardised and shared by other regulations (e.g. SFTR,..).

<ESMA_QUESTION_EMIR_6>

7. : Do you agree TRs making four reports available as described in Guideline 10 is the most effective way to ensure authorities receive information that can be used to achieve the objectives of position calculations? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_7>

Based on descriptions provided in chapter 6, 7, 8 and 9 of the consultation paper, detailed responses will be provided from the response to question 16.
Before being able to provide any opinion, we are in the view that the objectives and stakes of the guidelines should be developed in order to better understand which precise type of authority needs which kind of new output and for which purposes in 2018.
One should ensure there is no overlap with SFTR regarding collateral assessment.
Major NCAs have already developed processes and queries for this purpose, dealing with potential inconsistencies between TRs and data quality issues. One scenario would consist in capitalising on their work.

<ESMA_QUESTION_EMIR_7>

8. : Please can you provide estimates of the potential monetary costs for a TR producing the sets, in accordance with all the specificities that are proposed in this paper? Please can you elaborate on the reasons for you answer.

<ESMA_QUESTION_EMIR_8>

Please refer to the answer to question 7.

<ESMA_QUESTION_EMIR_8>

9. : Do you agree with the Guideline 11 for ensuring that historical errors are remediated in future? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_9>

Yes, only in the case where the error was the responsibility of the TR.
A procedure would need to be set-up between Competent Authorities (CAs), TRs and Reporting Counterparties.

<ESMA_QUESTION_EMIR_9>

10. : Do you see a need for any additional Guidelines to ensure that historical errors are remediated in future data made available by TRs? For example in relation to the maintenance by TRs of records of historical position sets.

<ESMA_QUESTION_EMIR_10>
<ESMA_QUESTION_EMIR_10>

11. : Do you agree with this method proposed in Guideline 12, designed to ensure that derivatives in different currencies do not lead to authorities receiving inconsistent data that is arduous to analyse. Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_11>

The calculation can be performed by the TR based on the foreign exchange rate provided on the ECB website. However, the calculation of the exposure in the different currencies can be relevant in the case the data calculation is not performed on a daily basis (with a daily frequency) because the exposure and collateral can shift a lot from one period to another.

It would be helpful to ensure market standards are used in exchange rates. Differences in exchange rates could lead to incorrect data analysis, especially when there is high volatility in markets, where accurate information will be of the highest importance.

<ESMA_QUESTION_EMIR_11>

12. : Do you agree with the approach in Guideline 13 for how TRs should treat abnormal values in the derivative data they receive when producing calculations? Are there any potential methods you see as appropriate for detecting outliers in a consistent manner? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_12>

There is a stake in being able to identify outliers, with a typology of errors (instrument, valuation, dates…). Moreover, producing 2 different sets of calculation appears burdensome. Data quality issues should be dealt at the source by each NCA with the knowledge of the business of the supervised counterparties. A data quality effort should be invested in particular on valuation fields.
Some NCAs have implemented processes to detect abnormal values. (e.g. compare extreme values with averages for a similar class of business / reconciliation with Finrep declarations).
A scenario would consist in capitalizing on these works.

<ESMA_QUESTION_EMIR_12>

13. : Do you agree that the approach described in Guideline 14 is the most effective way to make available useful information for authorities? Are there any alternative approaches for dealing with erroneous reports which you think could help produce useful calculations? Do you think that this approach is appropriate for derivatives reported before 1 December 2014? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_13>

If valuation fields and the direction (buy/sell) is populated, a scenario would consist in not excluding the record and classifying it under the most representative category, based on a determination algorithm.

<ESMA_QUESTION_EMIR_13>

14. : Do you agree with that the proposed Guideline 15 is the most effective way for ESMA to ensure that they can quickly access the procedures and relevant algorithms a TR follows to calculate positons? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_14>

Yes. A procedure that documents the different steps (including the position calculation algorithms) should always be kept updated by the TR and available for ESMA. However, a standard calculation algorithm should be provided by ESMA in order to make sure that all TRs follow the same guideline.

<ESMA_QUESTION_EMIR_14>

15. : Do you foresee any difficulties with complying with these guidelines in line with the H2 2018 implementation timeframe? Please provide rationale to support and explain your answer by

detailing the specific aspects of the implementation process that would impact the total implementation timeline.

<ESMA_QUESTION_EMIR_15>
<ESMA_QUESTION_EMIR_15>

16. : Do you agree that the metrics included in Guideline 16 are the most appropriate for quantifying the exposures of the different derivatives? Do you consider necessary and essential for the accurate assessment of exposures between counterparties to include separate metrics for positive and for negative values of fields Notional and Values of contract? Are there any other more efficient, still accurate ways to represent this? Would the dimension "Master agreement type (T2F30) be relevant in this case? Please can you elaborate on the reasons for your answers.

<ESMA_QUESTION_EMIR_16>

We agree with the different dimensions and would suggest MTM to be considered in addition to the notional.
Major NCAs have already developed processes and queries for this purpose, dealing with the specificities of the activities they supervise. One scenario would consist in capitalising on their work.
The use of the Master Agreement type (T2F30) is relevant. When applicable, this field is required for understanding the conditions which will govern the OTC derivative transactions between the counterparties and in particular the termination events, the close-out, the netting.

<ESMA_QUESTION_EMIR_16>

17. : Do you consider that the inclusion of the field Intragroup (T2F38) is required as an additional dimension? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_17>

Yes, as it should allow to better monitor the scope of entities eligible to netting, clearing and collateral.

<ESMA_QUESTION_EMIR_17>

18. : Would a further aggregation of derivatives with position sets created using the dimensions in Guideline 18 and Guideline 19 allow authorities to achieve a useful overview of potential systemic risks that may arise in financial markets? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_18>

In addition to Guideline 18, we would add the 2 following essential criteria:

- Counterparty type (credit institution, insurance, fund, corporate,..), as this criteria explains a lot of transaction characteristics and regulatory obligations.
  This classification similar to Basel's portfolio segmentation, can be built-up by linking each LEI to the counterparty type available at NCA's or at GLEIF's. Systemic risk should be assessed by concentration reports aggregated by pairs of counterparty types and assets classes, (rates and credit in particular).
- Maturity Buckets, with consistency with CRR's for consistency purposes

With regards to our understanding, Guideline 19 provides too many details. Valuations under EUR conversion should probably be sufficient. The precise objectives of this report should be more developed.

<ESMA_QUESTION_EMIR_18>

19. : Do you believe that the approach included in Guideline 20 for grouping derivatives with similar times to maturity is appropriate? Do you think that a more granular approach to the grouping of derivatives with similar time to maturity would be more useful? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_19>

We welcome this notion of Time to Maturity, similar to the Maturity Buckets used in CRR, in particular for liquidity reporting purposes. We would welcome some consistency with other financial (Finrep), prudential (Corep), and regulatory reporting (LCR, NSFR).

<ESMA_QUESTION_EMIR_19>

20. : Do you agree that the dimensions included in Guideline 17 to Guideline 20 are the most appropriate for grouping derivatives into reports for analysis by authorities? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_20>

Please refer to response to question 18.

<ESMA_QUESTION_EMIR_20>

21. : Do you believe that Guideline 21 which defines an additional dimension for grouping IRS derivatives is appropriate? Do you believe there is an alternative way to group similar IRS? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_21>

At this stage, we do not see additional ways which would add value, assuming that as per the previous guidelines, *Time-to-Maturity* is taken into account.

<ESMA_QUESTION_EMIR_21>

22. : Would an aggregation of credit derivatives with position sets created using the dimensions in Guideline 22 allow authorities to achieve a useful overview of potential systemic risks that may arise in financial markets? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_22>

The proposal seems to makes sense.
The frequency of payment (T2F85) can also be used for grouping the Credit Derivatives and evaluate the systemic risks for a given time period (ex: 3M).

<ESMA_QUESTION_EMIR_22>

23. **: Do you agree that the additional dimension for grouping commodity derivatives included in Guideline 23 will create more useful information for authorities? Please can you elaborate on the reasons for your answer.**

<ESMA_QUESTION_EMIR_23>

Expected objectives of this report should be developed.

<ESMA_QUESTION_EMIR_23>

24. **: Do you agree that the method described in Guideline 25 is the most effective way of determining a useful indicator when collateralisation of derivatives is performed on a portfolio basis? Please can you elaborate on the reasons for your answer.**

<ESMA_QUESTION_EMIR_24>
The median value would not provide a fair picture of the counterparty risk. We rather suggest to consider the net value of the portfolio (aggregated MTM of the transactions diminished by the total collateral posted at Portfolio level).
Example: The Net Counterparty Risk of a Fund cannot exceed 10% of the net asset if the counterparty is a credit institution or 5% in other cases (Luxembourg UCTIS law 17 December 2010 – Article 43(1)). Therefore, we would recommend to perform the following calculation:
$(Exposure\ of\ the\ portfolio\ (Mark\ to\ Market) - Collateral\ of\ the\ portfolio)$
which is in line with the following requirement from Luxembourg UCITS law 17 December 2010 – Article 43(1):

$$\frac{\left(Exposure - Collateral\ (1 - haircut)\right)}{NAV} < 10\%\ or\ 5\%$$

<ESMA_QUESTION_EMIR_24>

25. **: Do you agree that the aggregation of these values in line with Guideline 26 is the most appropriate way to provide authorities with a view of collateral positions? Please can you elaborate on the reasons for your answer.**

<ESMA_QUESTION_EMIR_25>

With a view of determining credit risk and systemic risk, we would rather suggest to aggregate collateralised asset per derivative transaction types (Forward, Options, swaps, CDS). In this case, it will be important to net MTM exposures and use a common currency to ensure overall consistency.

<ESMA_QUESTION_EMIR_25>

26. **: Do you agree with the proposed Guideline 28 for aggregating collateral sets and representing the data for authorities? Please can you elaborate on the reasons for your answer.**

<ESMA_QUESTION_EMIR_26>

With a view of having a complete picture of the collateral posted and received, it will be important to include a common currency to avoid mismatches in the data. The use of the portfolio code should be the main attribute to consolidate data.

<ESMA_QUESTION_EMIR_26>

27. : For the calculation of positions, is it more appropriate that the currency of the collateral is the same as the currency of the field Value of the Contract (T1F17)? In case they are not, should they all be converted to the same currency, e.g. EUR? Should, alternatively the currency of the Value of the contract and the collateral be always the currency of the notional of the derivatives? Please can you elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_27>
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A consistency of the currencies has to be considered. It would be valuable that TR can provide a conversion engine with a single set of currency rates.
It would ensure consistency all along the reporting channel.
The collateral currency might not necessarily be identical to the currency used for valuing the OTC Derivative transaction. In that case, we would recommend to perform the aggregation by converting the Collateral value in the currency used for assessing the OTC Derivative transaction.

<ESMA_QUESTION_EMIR_27>

28. : Do you agree with the proposal to use the dimensions and metrics included in Guideline 29 and Guideline 31 to aggregate derivatives to provide information on specific currencies to central banks of issue? Please elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_28>

Central banks representatives seem the best persons to respond to this question.

<ESMA_QUESTION_EMIR_28>

29. : Do you agree that Guideline 32 includes the appropriate metrics and dimensions for calculating collateral held in specific currencies for derivatives? Please elaborate on the reasons for your answer.

<ESMA_QUESTION_EMIR_29>

The purpose should be clarified, but from a view of monitoring collateral exchanged in various currencies, we would agree that guidelines are sufficient.

<ESMA_QUESTION_EMIR_29>