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& financial services



JOINT RESPONSE TO FSA CP 08/16 QUARTERLY CONSULTATION CH 5 TRANSACTION REPORTING RULES: TRANSACTIONS IN OVER THE COUNTER DERIVATIVES

BBA / ICMA / Xtrakter / FOA welcome the opportunity to comment on CP08/16 and support the proposed rules for changes to transaction reporting requirements in over-the-counter (OTC) derivatives. Our members consider that these amendments to the Supervision Manual (SUP 17) will bring additional clarity to the reporting that FSA receives. The FSA's constructive approach to consultation has created a significantly improved rule structure for reporting OTC Derivatives.

Our members are FSA's strongest partners in tackling market abuse. Clean markets are a vital basis for the prosperity of both the City of London and the wider single European market. We consider that these changes will help to provide greater focus to FSA's information on true positions in the market whilst allowing firms to more accurately report their transactions.

Q5: Do you support our proposal to amend SUP 17.1.4?

Yes. We believe that this change will remove potentially misleading 'noise' from the transaction reporting tape that FSA receives. Our members operate within the context of the FSA principles for business (PRIN) and are mindful of their obligations under SYSC and MAR. As a result firms will continue to maintain a robust analysis of any transactions for potential market abuse. Firms will ensure there are vigorous processes around these transactions, both quantitative and qualitative, to ensure irregularities are reported to the FSA via a Suspicious Transaction Report.

We feel it would be useful for the FSA to provide additional clarification to the industry that the new rules are intended to incorporate any OTC products which reference a market index such as iTraxx. However we note that if an OTC product references a market index which has been securitised and is traded on a regulated market this should be treated as a single equity underlying and will be included in the transaction reports made to the FSA. It would be helpful if the application of the new rules in specific instances were more clearly stated.

Q6 Do you support our proposal to introduce three new derivative type classifications?

Yes. The introduction of a new derivative type classification to identify a spread bet on an option where there is a single underlying will help to bring additional transparency. Similarly creating a specific category for a Contract For Difference (CFD) on an option will bring benefits. These new categories will enable firms to work more effectively with FSA to identify any attempted market abuse through the use of these Russian Doll like instruments. With reference to paragraphs 5.13 and 5.14 of the Consultation Paper, in the instance where the underlying instrument identifier is an All code (Alternative Instrument Identifier), there may be some further complications in reporting that the industry would like to discuss further with FSA.

The introduction of a *complex derivative* classification is advantageous to the FSA as well as the industry. This will correct the current situation where firms are having to report transactions in a distorted fashion in order to make them fit the transaction reporting matrix of fields. It will remove white noise and unnecessary volume from the data submitted to FSA. This will also provide a flag in the database for FSA to identify those transactions that may need to be looked at in more detail rather than using purely automated methods. The industry sees this a significant step forward in dealing with the increasing complexity and variety of instruments that are traded. The industry understands ARMs have already received spec changes regarding the consultation and the industry believes this to be a sensible approach to ensuring implementation is completed in a timely manner

We support FSA's proposal in Para 5.17. This is another sensible provision that will both cut costs for firms and enhance the information available in SABRE II. It will alleviate the awkward situation where firms are being forced to populate fields when they are aware that the information is either not available at the time of reporting or that it will be subject to significant change.

The industry is fully seized of the fact that this derivative classification should not be used as a 'dustbin' for difficult to report transactions. Firms will be actively monitoring the number of transactions that go into this category. Members will be likely to request feedback from the FSA that the volume and type of transactions being categorised in this way is appropriate, much as they did when the new STR regime was introduced.

We support the FSA proposals however we would like the FSA to provide the industry additional clarification as to the difference between a contract for difference and a swap as under the regulated activities order a swap is a type of contract for difference. We would encourage the FSA to issue the new version of the TRUP as soon as possible and to defer the implementation date to September 2009.

Cost Benefit Analysis

The industry considers that the result of these changes to SUP 17 will be to reduce the volume of unnecessary transactions being reported thereby reducing costs for firms. Transactions will now be reported more accurately and efficiently, reducing the costs for FSA in reviewing transactions and market abuse detection.

Re paragraph 5.9 in the Consultation Paper, where it is proposed to exclude from reporting scope those products with multiple underlyings not all issued by the same issuer. If this is going to translate into a requirement always to send an underlying instrument for OTC derivatives, then we consider that some of our systems are going to have difficulty in practice distinguishing in a systematic way between multiple underlyings all having the same issuer, and those where the issuers are different. As such we would welcome a suitable timeline to allow for systems development and testing. In the interim we would like to be able to continue reporting such transactions anyway, even if it means that we have to choose arbitrarily one of the underlying ISIN's, and even if sometimes that will identify only one of several associated issuers. We believe that some firms in the industry will find it hard to identify these structures in practice. This was a late addition to the rule changes by the FSA and therefore we advise that the industry is given appropriate lead time to undertake sufficient due diligence on the application of this requirement. In the interim the FSA should accept that there may be some over-reporting of instruments with multiple underlyings issued by different issuers.