

5 June 2015

European Banking Authority
Floor 46
One Canada Square
London
E14 5AA

Submitted via the EBA website

AFME response to EBA consultation paper on draft RTS on detailed records of financial contracts

Dear Sir / Madam

Please find enclosed the response of the Association for Financial Markets in Europe to the EBA consultation paper on draft Regulatory Technical Standards on a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed under Article 71(8) of Directive 2014/59/EU (EBA/CP/2015/04).

Please do not hesitate to contact us if you have any questions or wish to discuss these issues further.

Yours faithfully



Gilbey Strub
Managing Director, Recovery and Resolution
AFME

Association for Financial Markets in Europe

London Office: St. Michael's House, 1 George Yard, London EC3V 9DH T: +44 (0)20 7743 9300 F: +44 (0)20 7743 9301

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971

Company Registration No: 6996678 Registered Office: St. Michael's House, 1 George Yard, London EC3V 9DH

www.afme.eu

Consultation response

Draft Regulatory Technical Standards on a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed under Article 71(8) BRRD (EBA/CP/2015/04)

5 June 2015

The Association for Financial Markets in Europe (“**AFME**”) welcomes the opportunity to comment on the European Banking Authority (“**EBA**”) Consultation Paper (the “**CP**”) on draft Regulatory Technical Standards (“**RTS**”) on a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed under article 71(8) of the Bank Recovery and Resolution Directive (2014/59/EU) (the “**BRRD**”).¹

The draft RTS creates record keeping requirements for financial contracts by specifying a list of the minimum information that must be contained in the institution’s detailed records. “Financial contracts” are defined in BRRD article 2(100).² This information must be made available to

¹ AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

² “Financial contracts” includes the following contracts and agreements:

- (a) Securities contracts, including:
 - (i) contracts for the purchase, sale or loan of a security, a group or index of securities;
 - (ii) options on a security or group or index of securities;
 - (iii) repurchase or reverse repurchase transactions on any such security, group or index;
- (b) Commodities contracts, including:
 - (i) contracts for the purchase, sale or loan of a commodity, a group or index of commodities;
 - (ii) options on a commodity or group or index of commodities;
 - (iii) repurchase or reverse repurchase transactions on any such commodity, group or index;
- (c) Futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;
- (d) Swap agreements, including:
 - (i) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather; emissions or inflation;
 - (ii) total return, credit spread or credit swaps;
 - (iii) any agreements or transactions that are similar to an agreement referred to in point (i) or (ii) which is the subject of recurrent dealing in the swaps or derivatives markets;
- (e) Inter-bank borrowing agreements where the term of the borrowing is three months or less;
- (f) Master agreements for any of the contracts or agreement referred to in points (a) to (e).

competent authorities and resolution authorities on request. The RTS applies to institutions within the scope of the BRRD as defined in article 1 that “are likely to be subject to an application of the resolution action.” The source of the delegated act resides in BRRD article 71 which gives resolution authorities the power to suspend the termination rights of any party to a contract with an institution under resolution until the end of the next business day following publication of a notice of resolution.

A. General comments on the draft RTS

We believe that the RTS’ approach to specifying the circumstance in which information must be maintained to where the resolution plan foresees the taking of resolution action in relation to the institution concerned is generally appropriate. We would suggest, however, that the fields in the template be restricted to information that is relevant to resolution; for example, where there are actually exposures under the contracts and subject to de minimus thresholds.

We are concerned that the requirements under the RTS will not be compatible with the yet to be developed recordkeeping requirements under the Securities Financing Transactions Regulation (SFTR). The co-legislators (European Parliament and Council) are currently negotiating the SFTR in trilogues and both institutions want to provide a phase-in period in order for banks to have enough time to prepare for the reporting requirements. Given the overlap in the requirements, this RTS should follow the same approach and allow for a sufficient implementation period. We consider that it is important to ensure consistency, in terms of timeline, between the SFTR and the RTS.

We believe that the EBA’s mandate does not extend to requiring the information to be kept in a “central location on relational database capable of being accessed by the competent and resolution authorities from which information can be extracted readily and transmitted to the relevant authority.” The Level 1 text directs the EBA to specify the information required and the circumstances in which it is required, but not necessarily the location. Information for purposes of EMIR and other reporting obligations is held in different systems so provided it can be furnished upon request it should not require the incremental spend of consolidating IT systems. We would request the wording related to a central location therefore be deleted from the recital.

A substantial amount of planning and development time will be required to implement these recordkeeping requirements particularly for cross border groups subject to overlapping requirements. With this in mind, AFME would like to request that the EBA consider providing a sufficient implementation period that is aligned with the SFTR.

A number of the suggested fields would require the records of the bank to be updated on a daily basis which we would suggest is not consistent with the principle of proportionality.

The proposed RTS should exclude trades where the bank is only acting as agent and not as principal or is trading against a CCP.

Finally, we would request that as many fields as possible, and particularly fields 10, 11, 34 and 35 be structured in a way that as far as possible they would be capable of being satisfied using

(g) *Futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, service, right or interest for a specified price at a future date;*

automated documentation search functionality (but not required as this functionality is expensive and will take firms time to build).

B. Comments in response to the questions raised in the CP

Q1: Do you agree with the circumstances in which the requirement to maintain detailed records shall be imposed?

Yes, subject to our comments on the individual fields.

Q2: If the answer is no, what alternative approach could be used to define the circumstances in which the requirement should be imposed in order to ensure proportionality relative to the aim pursued?

We would propose additional wording in Article 3 such that record keeping should be required for each financial contract under which the entity has a financial exposure, over a de minimis amount. There are a number of contracts that a bank might enter into which are inactive from time to time and inactive contracts should not be caught by the provisions.

Q3. Do you agree with the list of information set out in the Annex to the draft RTS which it is proposed shall be required to be maintained in the detailed records?

We would emphasize that the information required should be relevant to the exercise of the stay or implementation of the resolution plan in order to maximize rapid decision making and not overwhelm regulators in a crisis environment with irrelevant information. Some fields are irrelevant to resolution, like the domicile of counterparty or the counterparty's corporate structure. Other fields are not relevant to all the different types of financial contracts. For example, initial margin is relevant for derivatives but not for interbank loans or securities acquisitions. We also suggest that for clearer presentation the information regarding financial contracts be divided into two sections: one regarding the framework contract (at counterparty level) and the other relating to each operation (operation level).

We have set out our other comments to the individual fields below.

Field 5 Corporate sector of the counterparty

Corporate sector of the counterparty is not relevant to the resolution action so we propose that this field be deleted.

Field 6 Financial or non-financial nature of the counterparty

This is relevant only to EMIR and should be deleted as it is already covered by EMIR. Given the broader scope of this RTS in the range of contracts to which it applies, this field would not be relevant to non-EMIR contracts.

Field 7 Group undertaking

We question the clarity of this requirement and the overall relevance of "group" data in relation to the counterparty. Our concern is that the EBA is seeking information on the counterparty group (as this is nested in the middle of a series of fields dealing with counterparty data), not that of the resolution firm. If that is the case, it is a very onerous request, and one with no clear relevance to resolution planning. It will also be very difficult for firms to meet – firms do not necessarily have this sort of data on tap. They might instead use more bespoke "groupings" for risk management purposes, for example, and to get "legal" grouping absolutely right firms would be dependent on their counterparties. Group structures also change from time to time.

We would encourage the EBA to consider the cost-benefit equation of requesting this information to be kept.

Field 8 Contract with non-EEA counterparty

This will be burdensome to build into firms' systems. We would suggest field 4 is adequate and that the potential cost of keeping a record of whether the counterparty's domicile is outside the EEA is disproportionate to the benefit of reporting this information.

Field 10 Contractual recognition - Write-down and conversion (third country-governed contracts only)

Field 10 should be compliant with A55 as implemented under national law.

Fields 10 and 11 Contractual recognition

The RTS should refer to master agreements rather than transaction or counterparty level information unless there is no master agreement. In addition, the language in field 11 "affected by the application of the resolution powers" is rather vague. Is this intended to refer to the counterparty's recognition of the stay power?

Field 12 Financial contract relates to core business lines

In some cases it will not be possible to allocate a master agreement to a specific business line because it may cover multiple business lines.

Fields 13 Value of contract, 15 Valuation date, 16, Valuation time, 17 Valuation type, and 18 Trade exposure

These fields should be condensed into a single field "financial exposure" as that is the principal concern in resolution.

Fields 20 Composition of collateral, 23 Initial margin posted, 24 Initial margin received, 25 Variation margin posted and 26 Variation margin collected

The combined effect of these collateral related fields is too far reaching. Instead, an aggregate value of collateral should be required as is provided in EMIR. For example for "composition of collateral" firms should not be required to list all categories of collateral posted but instead only the value).

Fields 23 and 24 Initial margin posted and Initial margin received

We would suggest that these fields be combined to request only where the collateral can be identified at the point of resolution.

Fields 34 and 35 Termination conditions and Termination right

It's not clear what the difference is between termination conditions and termination rights. These fields could possibly be condensed into a single field and refer to master agreements rather than transaction or counterparty level information unless there is no master agreement

Field 38 Netting arrangement

It is not clear what the EBA means by netting arrangement, therefore the resolution authority might not obtain the information they need with this request.

Q4. N/A

Q5. Do you agree that in the Annex to the draft RTS the same structure as in Commission's delegated regulation (EU) no 148/2013 should be kept?

We support the EBA's approach which seeks to avoid unnecessarily burdening firms by aligning the RTS with EMIR. However, it is important to note that some contracts are not in the scope of EMIR so it would be helpful if a phased in approach was taken with regard to these contracts.

Q6. Considering the question above do you think it would be possible and helpful to define expressly in the RTS which data points should be collected at a "per trade" level, and which should be collected at a "per counterparty" level?

We recommend making a distinction between portfolio/master agreement level and transaction level rather than looking at 'per trade' and 'per counterparty' as under EMIR. Resolution measures will need to respect the netting set so master agreement information will often be more relevant for the resolution authority.