The European Securities and Markets Association
103 Rue de Grenelle
Paris
75007
France

Attention: Rodrigo Buenaventura/Fabrizio Planta

23 September 2013

Dear Sirs,

The Alternative Investment Management Association (AIMA)[1] and Managed Funds Association (MFA[2], and together with AIMA, we) would like to thank the European Securities and Markets Authority (ESMA) for its continued efforts to clarify certain aspects of the European Market Infrastructure Regulation (EU) No 648/2012 (EMIR)[3] through its periodic updates to the questions and answers on the implementation of EMIR (Q&As).[4]

As ESMA is aware, we submitted a letter dated 12 March 2013 (12 March Letter)[5] to it with the aim of aiding ESMA's update and the reformulation of the Q&As. As we are keen to ensure our assistance is provided on an ongoing basis, this letter presents a number of additional issues not raised in the 12 March Letter, which are relevant for a significant number of market participants caught by EMIR.

Terms used but not defined in this letter and the Appendix hereto have the meanings given to such terms in the Q&As.

The key issues raised in this letter are as follows:
1. Reporting of ETDs;
2. FX contracts under EMIR;
3. Access to and fees charged by TRs in connection with access to data provided by reporting entities;
4. Partial delegation of reporting;
5. Fund structures where assets and liabilities are segregated;
6. Dispute resolution – scope of requirements to be imposed upon TCEs;
7. Portfolio reconciliation;
8. Portfolio compression; and
9. Diligence required from NFCs.

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1 As the global hedge fund association, the Alternative Investment Management Association has over 1,300 corporate members (with over 7,000 individual contacts) worldwide, based in over 50 countries. Members include hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors.

2 Managed Funds Association represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent and fair capital markets. MFA, based in Washington, DC, is an advocacy, education and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

3 Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF.

4 EMIR Q&As dated 5 August 2013, available at: http://www.esma.europa.eu/system/files/2013-1080_qa_iii_on_emir_implementation.pdf.

5 12 March Letter, available at: http://www.aima.org/en/document-summary/index.cfm/docid/A16C2F1B-EA24-4086-A0E23CA6AF5ED1F8.

Our detailed Q&As in respect of each of the above are set out in the appendix to this letter for your consideration.

We would also encourage ESMA to consider the issues raised in our 12 March Letter, specifically the following two points:

1. **The correct classification of AIFs under EMIR**:
   As different obligations apply to FCs and NFCs under EMIR, it is vital that funds are in a position to determine their EMIR classification with certainty. As highlighted in the 12 March Letter, the lack of synchronicity between the authorisation and registration requirements under AIFMD (with respect to both EU AIFs and Non-EU AIFs) means there is no such certainty; and
2. **Implementing acts on equivalence under Article 13 of EMIR:**
   The lack of clarity as to the meaning of the word "established" in Article 13, means situations could arise where market participants are unclear as to whether their compliance with third country regulatory requirements satisfies the relevant requirements under EMIR. Consistent with the collective statement of G20 Finance Ministers and Central Bank Governors, we believe that the equivalency determinations under Article 13 form a crucial part of the attempt by European regulators to ensure they defer to third country regulators "when it is justified by the quality of their respective regulations and enforcement regimes, based on essentially [identical] outcomes, in a non-discriminatory way, paying due respect to home country regulation regimes."[6] We therefore encourage ESMA to remove this uncertainty, since it presents a very real obstacle to its ability to engage in such regulatory deference. In particular, we encourage ESMA to consider our suggestion that "For purposes of Article 13, a party may be said to be "established" in the third country, if it is being regulated pursuant to or complying with that third country's regime by reason of some "nexus" to the third country". Without clarity on this issue, any implementing act adopted under Article 13(2) of EMIR will be of limited value.

We thank ESMA for the opportunity to highlight the key areas where we consider additional clarity is necessary with respect to EMIR. We hope that you find our questions and suggested answers helpful in respect of these concerns. We would welcome the opportunity to discuss the contents of this submission in greater detail. Please do not hesitate to contact Jiří Król, Adam Jacobs or Wesley Lund of AIMA at +44 (0) 20 7822 8380 and Stuart J. Kaswell or Carlotta King of MFA at +1 (202) 730-2600 in this regard.

Yours faithfully,

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Head of Government and Regulatory Affairs
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6 Communiqué Meeting of Finance Ministers and Central Bank Governors, Moscow, 19-20 July 2013. Available at: www.g20.org/load/781659263.

Appendix – List of Q&As

1. Reporting of ETDs

There is a lack of clarity as to when market participants must begin reporting ETDs. The definition of ETDs in ESMA's Final Report on 'Draft implementing technical standards amending Commission Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to TRs under Regulation (EU) No 648/2012' (Final Report), would seem to exclude ETDs executed on a non-EU trading venue[7] such that the reporting start date of such non-EU executed ETDs would fall on or around 12 February 2014 instead of 1 January 2015 (subject to this being agreed by the European Commission (EC)).

In the Final Report, ESMA recognises the differences between trading methods for ETDs and OTC derivatives and the related complexities involved in the reporting of ETDs compared with OTC derivatives. Moreover, ESMA states that its request to delay the reporting start date to 1 January 2015 stems from the need to develop specific guidelines on reporting of ETDs in light of such complexities.

Given that the differences between ETDs and OTC derivatives recognised in the Final Report apply equally to EU and non-EU traded ETDs, we believe it is consistent with ESMA's intent to have the later reporting start date also apply in respect of non-EU executed ETDs.

Proposed Q&A:
Does the definition of ETD contained in the Final Report include ETDs executed on a non-EU trading venue for purposes of the reporting start date in respect of ETDs?

Yes.

ESMA believes that the differences between OTC derivatives and ETDs highlighted in the Final Report are equally applicable to non-EU traded ETDs. We, therefore, believe that the delay to the reporting start date proposed in the Final Report should also apply to all non-EU executed ETDs.

2. FX contracts under EMIR

The EC's 'Frequently Asked Questions' dated 8 February 2013 (FAQs),[8] together with recital 19[9] of EMIR, make clear that the EC expected some FX contracts to be outside the scope of the clearing obligation under EMIR. The EC's intent is relevant for purposes of ESMA's consideration and determination as to the applicability of the clearing obligation to FX derivatives in accordance with the clearing obligation procedure.[10]

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7 *See* paragraphs 29-30 of the ESMA Final Report on 'Draft implementing technical standards amending Commission Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories under Regulation (EU) No 648/2012', available at: http://www.esma.europa.eu/system/files/2013-1087_-_final_report_on_amending_its_on_etd_reporting.pdf) (Final Report).

8 *See* Question 2 of the FAQs states: 'EMIR applies to all types of derivative contracts as defined in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC (MIFID). The applicability of the clearing obligation to FX derivatives will be assessed by ESMA in accordance with the clearing obligation procedure, taking into account the specificities of the product in accordance with Article 5(4) of EMIR in combination with Recital 19.' FAQs available at: http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/emir-faqs_en.pdf.

9 *See* Recital 19 of EMIR, where in describing the suitability of certain classes of OTC derivatives contracts for clearing, Recital 19 states that: 'The predominant risk for transactions in some classes of OTC derivative contracts may relate to settlement risks,., and may distinguish certain classes of OTC derivative contracts (such as FX) from other classes. CCP clearing specifically addresses counterparty credit risk, and may not be the optimal solution for dealing with settlement risk...'

10 *See* Article 5 of EMIR. In addition, we note here our recent submission to ESMA on the clearing obligation under EMIR, 'AIMA/MFA Response - The Clearing Obligation Under EMIR' (available at: http://www.aima.org/objects_store/eu_emir_esma_dp_-_clearing_obligation_-_2013_-_response_to_consultation.pdf). In response to question 15 of the Discussion Paper regarding 'The Clearing Obligation Under EMIR' (available at: http://www.esma.europa.eu/system/files/2013-925_discussion_paper_-_the_clearing_obligation_under_emir_0.pdf),

While we acknowledge that market participants will have more certainty as to the applicability of the clearing obligation to FX derivatives once ESMA makes its determination in accordance with the clearing obligation procedure (taking into account the specificities of the product referred to in recital 19 of EMIR), market participants have no such clarity with respect to application of other EMIR obligations (e.g., reporting and risk mitigation requirements for non-cleared derivatives) to FX derivatives.

One key issue in determining the application of EMIR obligations to FX derivatives is the lack of clarity as to whether such derivatives are contracts that fall within the definition of a 'derivative' under EMIR. The definition of derivative in Article 2(5) of EMIR incorporates by reference the definition of 'financial instrument' in paragraphs (4) to (10), Section C of Annex I of the Markets and Financial Instruments Directive No.2004/39/EC (MiFID).[11] MiFID, as a European directive, relies on specific EEA member states (Member States) to transpose and provide guidance as to what different MiFID definitions mean.[12] There remains a lack of clarity with respect to each Member State's interpretation as to which FX contracts are considered financial instruments under MiFID.[13] Therefore, whether an FX contract constitutes a 'derivative' for purposes of, and is subject to, EMIR could vary from Member State to Member State as there is no consistent pan-EEA understanding as to which FX contracts are considered financial instruments under MiFID. This definitional variability creates considerable uncertainty and makes it particularly difficult for NFCs to determine whether they are NFCs referred to in Article 10 of EMIR by virtue of exceeding the prescribed level of FX derivatives activity (i.e., NFC+s).

It is, therefore, vital that ESMA provide guidance that clarifies which FX contracts it considers to be outside of the scope of EMIR. We note that the U.S. Department of the Treasury provided certainty as to the treatment of FX derivatives in the United States on 16 November 2012, when it issued its final determination (Final Determination)[14] exempting certain FX swaps and forwards from mandatory derivatives requirements under the Dodd-Frank Act, including mandatory central clearing and exchange trading.[15]

Proposed Q&A:

Are FX forward transactions considered outside the scope of EMIR?

Taking into account the distinguishing characteristics of FX forwards and swaps highlighted in recital 19 of EMIR and the factors considered relevant in the Final Determination's exemption of certain FX contracts, we determine that FX swaps and forward should be considered outside the scope of EMIR.

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our submission, among other things, highlights the qualitative distinctions between FX derivatives and other derivatives asset classes, for the purposes of determining whether to subject FX derivatives to the clearing obligation under EMIR.

11 Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:145:0001:0044:EN:PDF.

12 For instance, the FCA has issued its 'Perimeter guidance on the types of derivative covered by EMIR' (PERG) (available at: http://www.fshandbook.info/FS/html/FCA/PERG). Further guidance has been provided the FSA Policy Statement 07/05 (available at: http://www.fsa.gov.uk/pubs/policy/ps07_05.pdf). In particular, PERG 13.4 provides that the following instruments are outside the scope of MiFID: (i) forward FX instruments unless caught by scope of the Regulated Activities Order (RAO); (ii) a non-deliverable currency forward that is not a 'future' for the purposes of the RAO because it is made for commercial purposes (Q30); and (iii) spot transactions in both FX and commodities.

13 While PERG 13.4 stipulates that FX spot transactions are outside the scope, there is still a lack of clarity as to what a spot transaction is *cf.* a FX forward.

14 *See* US Department of Treasury final 'Determination of FX Swaps and FX Forwards Under the Commodity Exchange Act', 77 Fed. Reg. 69694 (20 November 2012), available at: http://www.treasury.gov/press-center/press-releases/Documents/11-16-2012%20FX%20Swaps%20Determination%20pdf.pdf. The US Treasury issued its determination in accordance with section 1(a)(47)(E) of the Commodity Exchange Act, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (21 July 2010), available at: http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf (Dodd-Frank Act).

15 We further highlight the distinction made in the Final Determination between non-deliverable forwards (NDFs) and physically settled FX forwards. This distinction highlights the fact that NDFs are cash-settled between counterparties. On the contracted settlement date, the profit to one party is paid by the other based on the difference between the contracted NDF rate and the prevailing NDF fix. NDF contracts do not involve an exchange of the currencies involved.

3. Access to data at and fees charged by TRs

Article 78(7) of EMIR deals with access to data. Whether a person has access to data depends on whether it is an undertaking subject to the reporting obligation under Article 9 or a service provider. Article 78(7) requires that TRs should have objective, non-discriminatory and publicly disclosed requirements related to access by the undertakings subject to the reporting obligation. In contrast, service providers are permitted to access data only with the consent of the counterparties.

We note that in its Q&As, ESMA takes references to 'counterparties' in Article 9 to mean FCs and NFCs.[16] We are concerned that access to data at a TR, as described in Article 78(7) of EMIR, would not be provided to: (i) a third-country entity (TCE) or an entity who is not an FC or NFC; or (ii) an underlying investor in a fund who is caught by Article 9 of EMIR. We, therefore, encourage ESMA to clarify that the reference to 'counterparties' in Article 78(7) should be read so as to include TCEs or non-FC or non-NFC entities. In other words, it should read so as to include any party to a transaction reported to the TR. We further encourage ESMA to clarify that underlying investors in a fund which is subject to the obligation to report under Article 9 of EMIR should be permitted to access data provided the consent of the counterparties is obtained.

EMIR does not specify what fees may be charged in relation to such access, but Article 78(8) of EMIR provides that '[t]he prices and fees charged by a TR shall be cost-related'.

Proposed Q&A(1):
Are references to 'undertakings subject to the reporting obligation under Article 9' and 'counterparties' in Article 78(7) of EMIR intended to include a TCE, non-FC or non-NFC party to a transaction reported to a TR?

Yes.

Proposed Q&A(2)
Should underlying investors in a fund which is subject to the reporting obligation under Article 9 of EMIR be permitted to access data provided by such a fund to a TR?

Yes. An underlying investor in a fund which is subject to the obligation to report under Article 9 of EMIR should be permitted to access data provided the consent of the counterparties is obtained.

Proposed Q&A(3):
What fees (if any) should end-users be charged for accessing data they have provided either directly or indirectly to a TR authorised or recognised under EMIR?

TRs should provide unrestricted access to a counterparty in respect of the data such counterparty has provided (either directly or indirectly) to that TR with respect to that transaction. As such, as required by Article 78(8) of EMIR, the fees charged by a TR authorised or recognised under EMIR should be calculated on a costs-recovery basis only.

4. Partial delegation of reporting

In its Q&As,[17] ESMA clarified that a counterparty may delegate its obligation to report under Article 9 of EMIR to another entity (whether to its counterparty or a third-party service provider). There is, however, no clarity on the level of delegation permitted under EMIR.

As the market continues to develop delegated reporting solutions for counterparties that are subject to the EMIR reporting obligation under Article 9, clients, dealers and third-party service providers have identified certain 'counterparty data' (e.g., valuation and collateral data) where delegation is not feasible and/or where dealers are reluctant to report certain information on

[16] *See* 'Part IV' (page 49) of the Q&As.
[17] *See* 'TR question 8' (page 44) of the Q&As.

behalf of their clients. Delegated reporting arrangements are, therefore, more likely to allow counterparties to delegate the reporting of certain information in relation to some (but not all) data fields.

Therefore, it is important that ESMA issue guidance clarifying that partial delegation is permitted under EMIR.

Proposed Q&A:
Article 9(1) of EMIR permits FCs and NFCs to delegate reporting. Given the difficulties of delegating the reporting obligation in respect of certain counterparty information, are such counterparties permitted to delegate the reporting of some data fields contained in the annex to Commission Implementing Regulation (EU) No 1247/2012,[18] i.e., is a counterparty permitted to partially delegate the reporting obligation to either its counterparty or another third party?

ESMA recognises the difficulties certain end-users face in satisfying the reporting obligation under Article 9 of EMIR. This difficulty formed part of the basis on which delegation was explicitly permitted under Article 9(1). ESMA also recognises the specific problems counterparties face in delegating the reporting of some details of derivative contracts, such as collateral and valuation data (which form part of the so-called 'counterparty data fields'). Therefore, ESMA confirms that Article 9(1) of EMIR permits counterparties to delegate the reporting obligation under Article 9 of EMIR on a partial basis to either its counterparty or another third party.

5. Fund structures where assets and liabilities are segregated

Question 1 of the Q&As addresses whether a fund or fund manager should be treated as a 'counterparty' in the context of EMIR. The answer states that the "counterparty to the derivative transaction is generally the fund" unless the fund manager "executes trades on its own account".

Although paragraph (a) of Question 1 states that the clearing threshold should be assessed at the fund level "(or in case of umbrella funds, at the level of the sub-fund)", ESMA has yet to expressly address whether entities, such as sub-funds under an umbrella fund structure, should be treated separately for the purposes of the calculating the threshold (i.e., whether the derivative positions in respect of each sub-fund should be aggregated for purposes of calculating the clearing threshold).[19]

The creation of legally segregated entities, such as sub-funds under an umbrella fund structure or portfolios under a segregated portfolio company, indicates the separate pooling of investor contributions and corresponding profits/income and losses. Assets and liabilities are, therefore, legally segregated between sub-funds or portfolios (so-called 'ring-fencing'). For instance, a sub-fund or a portfolio would typically have a separate agreement with a specific investment manager. The liabilities arising in respect of such an agreement (e.g., the investment manager fee) would be borne by the relevant sub-fund or portfolio. Contractually, the investment manager would not have recourse to the assets of any other legally segregated entity in respect of such liabilities.

Similarly, a derivatives position would arise in respect of a specific legally segregated entity. Contractually, the assets and liabilities arising in respect of the relevant derivatives transactions are ring-fenced, as described above. It is, therefore, reasonable that the calculation of the clearing threshold be assessed in respect of each separate legally segregated entity.

Proposed Q&A:
Under a structure where certain assets and liabilities are legally segregated on the basis of separate investor contributions, such as in an umbrella fund or segregated portfolio company structure, should each legally segregated entity be treated as a 'counterparty' to a

[18] Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:352:0020:0029:EN:PDF.

[19] We appreciate that ESMA likely intended paragraph (a) of Question 1 to clarify that sub-funds should be treated separately.

derivatives transaction for the purposes of Article 10 of EMIR (i.e., the NFC in respect of which the derivatives positions arise)? If so, in calculating the positions of the relevant legally segregate entity for the purposes of the clearing threshold assessment (under Article 10(3) of EMIR), should such calculation include the OTC derivative contracts arising in respect of all legally segregated entities forming part of such structure (in accordance with Article 10(3) of EMIR)?

Under a structure where certain assets and liabilities are legally segregated on the basis of separate investor contributions, such as in an umbrella fund or segregate portfolio company structure, each legally segregated entity, such as a sub-fund or a portfolio, should be treated as the 'counterparty' to the derivatives transaction for the purposes of Article 10(3) of EMIR (i.e., the NFC in respect of which the derivatives positions arise).

When calculating the positions of legally segregated entities (as described above), for purposes of the clearing threshold assessment (under Article 10(3) of EMIR), such calculation should not include the derivative contracts arising in respect of other legally segregated entities forming part of the same structure.

6. Dispute resolution – scope of requirements to be imposed upon TCEs

In paragraph 12(b) of its Q&A, ESMA confirms that, where an EU counterparty is transacting with a TCE, the EU counterparty is 'required to ensure that the requirements...for dispute resolution....are met for the relevant portfolio and/or transactions even though the TCE would not itself be subject to EMIR'. This Q&A has resulted in EU counterparties entering into contractual arrangements with their TCE counterparties to ensure that the EU counterparties are able to fulfil their obligations in respect of the dispute resolution requirements.

In addition, a question has arisen as to what extent it is necessary to impose certain obligations upon TCE counterparties. In particular, it appears that the obligation to record and monitor a dispute relates only to the EU counterparties. In the case of EU counterparties transacting with a TCE, it would be difficult for an EU counterparty to know whether, for example, the TCE was recording and monitoring a dispute and indeed it is unnecessary for the TCE to do so. Therefore, it would be helpful if ESMA could clarify that EMIR is not intended to require EU counterparties to impose obligations on their third country counterparties other than those obligations that it may be necessary for such EU counterparties to impose in order for the EU counterparty to comply with its own obligations.

Proposed Q&A:
In ensuring that the dispute resolution requirements are met by a TCE, is it necessary for an EU counterparty to ensure that the TCE complies with the same obligations that the EU counterparty is required to comply with under EMIR?

EMIR is intended to ensure that EU counterparties have arrangements in place that ensure that TCE counterparties will allow an EU counterparty to identify, record, monitor and resolve disputes in the manner contemplated by Article 11(1)(b) of EMIR. It is only necessary for an EU counterparty to enter into such arrangements with a TCE to enable the EU counterparty to satisfy its own obligations under the dispute resolution requirements. For example, it might be that an EU counterparty needs to have internal policies to record and monitor a dispute. The EU counterparty need not impose such a policy upon its TCE counterparty provided that the arrangements entered into with the TCE are sufficient to enable the EU counterparty to comply with EMIR, including the requirement that an EU counterparty monitor and record disputes.

7. Portfolio reconciliation

Article 13(2) of the Commission Delegated Regulated (EU) No 149/2013[20] requires FCs and NFCs to engage in portfolio reconciliation that must cover key trade terms and 'the valuation attributed to

[20] Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0011:0024:EN:PDF.

each contract in accordance with Article 11(2)'. However, the only parties that are required to value contracts under Article 11(2) of EMIR are FCs and NFCs above the clearing threshold. Therefore, where such a counterparty is transacting with an NFC below the clearing threshold, it seems that it should not be necessary for such NFC to reconcile such a valuation. To provide otherwise, would impose an unnecessary burden upon an NFC and be contrary to EMIR's intended effect upon such NFCs that are expressly not required to engage in such a valuation under Article 11(2) of EMIR.

Proposed Q&A:
Is an NFC below the clearing threshold required to reconcile the valuation attributed to a contract in accordance with Article 11(2) of EMIR?

EMIR does not require an NFC below the clearing threshold to value a contract under Article 11(2) of EMIR, and accordingly, there is no need for it to reconcile any valuation of such contract.

8. Portfolio compression

There is currently uncertainty as to whether ESMA will regard a contract that results from a compression exercise as a new transaction for purposes of EMIR that is subject to the clearing obligation and/or mandatory margin requirements (if in force at the time of the completion of the compression exercise). This uncertainty as to how the clearing and margin requirements apply to transactions entered into prior to those obligations coming into force may create a moral hazard resulting in a disincentive to compress transactions.

Proposed Q&A:
If an OTC derivative contract comes into effect by virtue of a portfolio compression exercise is it to be regarded as a new transaction for the purposes of Article 4 and Article 11 (3) of EMIR?

If an OTC derivative contract is created by virtue of a portfolio compression exercise, then it should not be subject to more stringent requirements than applied to the transactions that were compressed. It is not our intention to impose different obligations under EMIR, including portfolio compression obligations, on the transaction resulting from the compressed exercise.

9. Diligence required from NFCs

In its Q&As, ESMA states that entities should give representations to FCs as to their status as an NFC. While representations of the kind suggested by ESMA are likely to feature in many contractual arrangements entered into between FCs and NFCs, we do not believe a mandatory requirement is appropriate. The inclusion of representations forms part of contractual negotiations between parties. As such it is not appropriate for this to be a regulatory requirement. It would, therefore, be helpful if ESMA could clarify that it is not mandatory for an NFC to provide such a representation to an FC, within the meaning of that term as a matter of law.

Proposed Q&A:
Is an NFC required to give a representation as a matter of law as to its status?

The representation referred to by ESMA in its Q&A is not a mandatory requirement and is intended to provide a suggestion as to how a market participant can assess the status under EMIR of their counterparties.