

5 May 2014

[REDACTED]
[REDACTED]
Agency for the Cooperation of Energy Regulators
Trg republike 3
1000 Ljubljana
Slovenia

Re: ICE Trade Vault Europe Limited's Response to the REMIT Trade Reporting User Manual
Public Consultation Paper

Dear [REDACTED],

ICE Trade Vault Europe Limited ("ICE Trade Vault Europe") welcomes the opportunity to comment on the Agency for the Cooperation of Energy Regulators' ("ACER" or the "Agency") public consultation paper related to the Wholesale Energy Market Integrity and Transparency ("REMIT") Trade Reporting User Manual ("TRUM") (the "Consultation Paper"). As background, IntercontinentalExchange, Inc. ("ICE") was established in 2000 as an over-the-counter ("OTC") marketplace with the goal of providing transparency and impartiality for the previously opaque, fragmented energy market. Since that time, ICE has grown significantly through organic growth fostered by product, technology and clearing innovation, and by acquisition of futures and equities exchanges that have broadened its product offerings and risk management services. As a part of this growth, ICE created ICE Trade Vault, LLC., the first provisionally registered Swap Data Repository in the United States, as well as ICE Trade Vault Europe, a registered Trade Repository serving the credit, interest rate, equities and commodities asset classes throughout Europe.

ICE would like to commend the Agency for its work on the Consultation Paper. ACER has been very proactive in discussing with relevant parties the structure and responsibilities related to wholesale energy market reporting, including ICE Trade Vault Europe and ICE Endex. In order to provide ACER with helpful feedback on the TRUM, below please find answers to the Consultation Paper questions. The Agency's comments and/or questions are reprinted in italics below, with ICE Trade Vault Europe's response immediately following.

1. *The Agency currently understands that the attached data fields (see Annex I of the draft TRUM) for the reporting of transactions in standardised and non-standardised contracts will be included in the Commission's implementing acts. Please provide us with your views on the attached data fields.*

ICE Trade Vault Europe Response: Please see the attached Annex I of the draft TRUM ("Annex I"), which includes ICE Trade Vault Europe's comments on the proposed data fields. ICE Trade Vault Europe additionally would like to recommend or seek clarity on the following:

- After reviewing and commenting¹ on the draft implementing rules to REMIT, there are several fields and formats contained therein that do not align with that described in the draft TRUM. For example:
 - The annex to the draft implementing rules (“Draft Rules Annex”) includes *Field #8: Type of Code Used in Field #7*. However, this does not appear in the text of the draft TRUM;
 - The format described in the Draft Rules Annex do not match for *Field #23: Energy Commodity*; and
 - *Field #26: Contract Trading Hours* is noted in the Draft Rules Annex, yet this is not contained in the draft TRUM.

- ICE Trade Vault Europe recommends that the column headings of the proposed data fields contained in Annex 1 of the draft TRUM be defined so that market participants fully understand when they could be subject to a reporting obligation. In particular, is “bilateral” equivalent to “OTC,” as defined in the draft implementing rules to REMIT?

- ICE Trade Vault Europe recommends the complete removal of the “Options” column, as options can be traded in auction, continuous or bilateral markets.

- ICE Trade Vault Europe believes that market participants would benefit from more clarity on precisely what orders are required to be reported and how those orders should be reported. For example:
 - Can ACER please confirm that orders associated with trades executed off-facility are not required to be reported? ICE Trade Vault Europe recommends that ACER not require the reporting of orders associated with trades executed off-facility because trade capture systems currently do not store this information. This obligation would impose significant technical burdens on market participants.
 - Are orders associated with those trades that are reportable under Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”) required to be reported? ICE Trade Vault Europe recommends that market participants not be required to report to ACER those trades that are already reported under EMIR.

- ICE Trade Vault Europe recommends that the *Field #9: Beneficiary Identification* field is made non-mandatory for auction and continuous trades as beneficiary information is not captured by all organised marketplaces. If this field remains mandatory, market participants may be unable to report records through organised marketplaces.

- In order to assist those market participants that execute trades that are reportable under both EMIR and REMIT, ICE Trade Vault Europe recommends that ACER align any required fields with those in listed in the Annex to Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012

¹ Please see the attached document with ICE Trade Vault Europe’s and ICE Endex’s comments to the draft implementing rules.

supplementing EMIR with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories (“RTS”). ACER’s alignment with the RTS will facilitate greater and quicker understanding of required fields as the market has already begun reporting under EMIR.

- As stated in the attached ICE Trade Vault Europe & ICE Endex Position Paper on the REMIT draft implementing acts, notional amount for commodities is not calculated, but rather is reflected as total quantity or “amount of the contract.” Therefore, ICE Trade Vault Europe recommends that the description of the “notional amount” field should be stated as the “amount of the contract.”
- Finally, ICE Trade Vault Europe respectfully requests clarity on what is meant by the term “if available.”

2. *Please provide us with your general comments on the purpose and structure of the draft TRUM, annexed to the consultation paper.*

ICE Trade Vault Europe Response: ICE Trade Vault Europe appreciates ACER’s efforts in drafting the TRUM. We believe this is a useful document which will allow market participants to understand how each field should be populated. Additionally, we believe that this document will allow ACER to further refine these fields in the future in order to achieve full transparency and understanding. To further enhance the TRUM, ICE Trade Vault Europe recommends the following:

- *Definitions* – ICE Trade Vault Europe believes that the inclusion of a definition section (either specific to Chapter 6, or at the beginning or end of the TRUM) would clear up any confusion with terminology used throughout the document. This definition section could incorporate the terms defined in REMIT by reference, but could also include definitions for terms used in the TRUM. For example, Chapter 6 of the TRUM uses the term “transaction” in relation to both orders and trades. The term “transaction” is usually used in the context of execution, and therefore is misleading when used as “order transaction.” This confusion could be alleviated if “transaction” is defined appropriately.
- *Updates* – It would be beneficial to include an explanatory section detailing how updates to the TRUM can be effectuated by ACER. This will provide market participants with the added assurance that ACER follows standard protocols to implement changes that could affect how reporting is conducted in the wholesale energy market. This information should include the process by which market participants can comment on proposed updates and provide adequate time to implement changes.
- *Enforcement* – ICE Trade Vault Europe understands that market participants, organised marketplaces, trading and confirmation platforms, Registered Reporting Mechanisms (“RRMs”) and market infrastructure providers are required to comply with REMIT and the REMIT implementing acts. It is unclear whether the TRUM is legally binding upon market participants and therefore enforceable by ACER. An explanatory note discussing whether the TRUM is legally enforceable by ACER would be

appreciated. This guidance will allow RRM to develop a legal framework (e.g., user agreement and rulebook) in accordance with the TRUM.

- *Newsletters* – Page 4 of the TRUM states that ACER will publish REMIT Newsletters. ICE Trade Vault Europe recommends that ACER employ a regular frequency at which these Newsletters are published. Further, does ACER envision these Newsletters overwriting the TRUM or the implementing rules?

3. *The Agency has currently identified a set of standard formats to be used in the reporting framework (see Chapter 5 of the draft TRUM). Do you consider these standard formats relevant? Are there any other standards that the Agency should consider?*

ICE Trade Vault Europe Response: ICE Trade Vault Europe believes that the standard formats listed in Chapter 5 of the draft TRUM are relevant, but recommends the following:

- The ISDA references² prices should also be included in Chapter 5 of the draft TRUM. These are industry standard references prices globally that are utilised.
- The links provided for Legal Entity Identifiers (“LEIs”) should be made generic and not reference a DTCC, SWIFT or any other proprietary publication.

4. *Please provide us with your views on the field guidelines for the reporting of transactions in standardised supply contracts (see Chapter 6 of the draft TRUM).*

ICE Trade Vault Europe Response: To further enhance Chapter 6 of the TRUM, ICE Trade Vault Europe recommends the following:

- *General Comments*
 - As previously stated, the fields and formats described in the draft TRUM do not perfectly align with the Draft Rules Annex. Incongruity among these documents could cause confusion in the marketplace and could result in mismatched data reported to ACER.
 - Annex I of the draft TRUM includes columns which designate when a field is required to be populated. It would be helpful to include this information in Chapter 6 of the TRUM as well.
- *Field #1: ID of the market participant or counterparty*
 - Where ACER gives a choice of codes to identify an entity, it should be clearly stated whether or not there is a hierarchy for the different types of market participant/counterparty ID codes. The ability for a market participant to report any of these codes without a defined hierarchy caused confusion in EMIR reporting and an inability to match trades.

² Please see the 2005 ISDA Commodity Definitions Document Listing.

- Does ACER expect RRM to verify that the market participant/counterparty ID code used is accurate and is indeed the one that was used in their registration form? The aggregation of this data from various sources (e.g., P-lei.org provides a list of LEI codes, ENTSO-E provides list of EIC codes, ACER will publish ACER codes, GS1 provides a search facility on their IDs; however, ICE Trade Vault Europe is unaware of any public database of BICs) would require significant technological and personnel resources.
- *Field #3: Trader ID as identified by the organised market place*
 - ICE Trade Vault Europe suggests that ACER remove from this section the following sentence: “ACER expects that centrally executed trade data is sourced directly from organised marketplaces or third parties acting on their behalf[.]” ICE Trade Vault Europe believes this sentence may cause confusion about the obligations of market participants versus organised marketplaces.
- *Field #5: ID of the other market participant or counterparty*
 - For exchange-traded contracts (“ETDs”), the legal capacity in which a Clearing Member acts in relation to clearing can be as agent or as principal. Where a Clearing Member acts as principal, there is a principal-to-principal relationship between the Clearing Member and their clients. Under this clearing model, the CCP is buyer to every seller’s Clearing Member and seller to every buyer’s Clearing Member. There is no direct contractual relationship between a Clearing Member’s clients and the CCP. Conversely, under the agency model, the Clearing Member acts as agent and guarantor of its clients. A client faces the CCP through its Clearing Member agent, which guarantees its performance to the CCP. The existence of two clearing models leads to different reporting models and may mean that some of the reportable fields, including *Field #5: ID of the other market participant or counterparty*, take on different meanings or represent different entities. ICE Trade Vault Europe recommends that ACER clarify that the parties that are deemed to have a REMIT reporting obligation for ETDs are aligned with ETDs Reporting Answer 2 of ESMA’s Questions and Answers document in all cases to avoid confusion on this topic.
- *Field #7: ID of the reporting entity*
 - ICE Trade Vault Europe recommends that ACER clarify the reporting entity for those trades executed on an exchange and subsequently reported to an RRM. Exchanges are central market infrastructures that already provide a range of cost-effective reporting services for clients. By requiring exchanges to report trade data to RRMs, exchange clients (many of which are small energy companies) will be absolved of this additional reporting obligation.
 - Page 17 of the draft TRUM states, “[t]he code used for the reporting entity ID should be the ACER defined code assigned when registration for becoming a RRM is completed.” However, the table included in this section of the draft TRUM gives the option of completing this field with

an LEI. This implies that reporting entities can complete this field with their LEI prior to their registration as an RRM. For data security and integrity reasons, ICE Trade Vault Europe recommends that ACER prohibit the reporting of LEIs in this field, because reporting entities should be required to receive registration as an RRM before they begin reporting to ACER.

- *Field #10: Trading capacity of the market participant or counterparty in field # 1*
 - Please refer to our comment related to *Field #5: ID of the other market participant or counterparty*.
- *Field #24: Contract type*
 - ICE Trade Vault Europe recommends providing definitions of the various formats allowed and examples of each.
- *Field #36: Index value*
 - ICE Trade Vault Europe requests that ACER confirm what one should submit for this field in cases where the index has not been priced at the time the order or trade is reported. ICE Trade Vault Europe recommends a blank or null value.
- *Field #38: Notional amount*
 - ICE Trade Vault Europe requests that ACER advise market participants as to what to report in *Field #38: Notional amount* where “Y” (price) is not defined. It is not possible to calculate a notional amount without price. In this instance, ICE Trade Vault Europe recommends this field be blank or populated with a null value.
- *Field #61: Confirmation Means*
 - Can ACER please confirm in the text of the draft TRUM that for all cleared trades that “I” represents “Implicit?”

5. *Do you agree that for the reporting of energy derivatives, the same standards that apply under EMIR and MiFID should apply under REMIT (see Chapter 7 of the draft TRUM)?*

ICE Trade Vault Europe Response: ICE Trade Vault Europe requests that ACER clarify the following within section 7 of the TRUM:

- For those derivatives reported under EMIR or MiFID, are market participants or reporting entities required to report any additional information in relation to that derivative (e.g., the delta to the specific fields in the European Commission’s implementing acts)? ICE Trade Vault Europe recommends that ACER not require market participants, many of which are small energy companies, report additional information for those trades that are reported under EMIR or MiFID.

- For those derivatives that have not been reported under EMIR or MiFID (e.g. where an entity domiciled in the United States executes an OTC financial derivative relating to electricity or natural gas produced, traded or delivered in the EU), should this derivative be reported according to the European Commission's REMIT implementing acts or to a registered trade repository according to EMIR? ICE Trade Vault Europe recommends that ACER affirmatively state that these derivatives should be reported through a RRM in accordance with the European Commission's implementing rules.
- For orders relating to derivatives, are market participants required to report such orders according to REMIT's implementing rules? ICE Trade Vault Europe recommends that ACER confirm that these derivatives should be reported through a RRM in accordance with the Commission's implement rules.

Additionally, ICE Trade Vault Europe requests that ACER update the first MiFID link since the current link shows as "The requested document does not exist."

6. *The Agency intends to include in the TRUM guidance on how trade reports shall be reported for different trading scenarios (see Chapter 8 of the draft TRUM). Please provide us with your views on which trading scenarios you would consider useful to cover in the TRUM.*

ICE Trade Vault Europe Response: ICE Trade Vault Europe believes that market participants would benefit from inclusion in the draft TRUM of the below trading scenarios:

- Exchange trade (cleared) where entity trades for House account;
- Exchange trade (cleared) where entity trades for Client account;
- Lifecycle events reported by a counterparty to the trade, when the original trade was reported by the Exchange.
- Orders and trades executed on an energy exchange market offered via a third-party vendor system – does the energy exchange have to offer the data reporting agreement?
- Bilateral voice;
- Bilateral via organised market place;
- Auction via organised market place; and
- Auction outside of organised market place.

It is important to note that regulatory reporting for certain shaped deals (e.g., transactions that deliver different quantities per month in order to meet seasonal heating/cooling demands) may require longer lead times from an information technology perspective, and this should be reflected in the draft TRUM.

7. *Please provide us with your views on the section in the draft TRUM related to data integrity (see Chapter 9 of the draft TRUM).*

ICE Trade Vault Europe Response: ICE Trade Vault Europe agrees with the approach taken by ACER with regard to data integrity, as set forth in Chapter 9 of the draft TRUM.

8. *Additional Commentary*

In addition to the questions set out in the Consultation Paper, ICE Trade Vault Europe recommends the below changes to the draft TRUM:

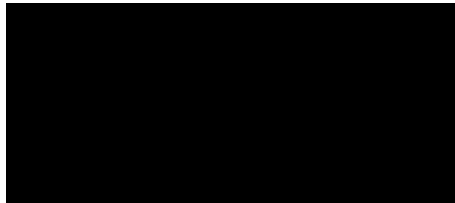
- Section 3.1 – It would be useful to market participants to include a definition for the term “Trade Reporting System” and further clarity that CCPs have a reporting obligation according to the definition of “market participant” in REMIT.
- Section 4.2 and 5.1 – ICE Trade Vault Europe recognizes that the *ACER Requirements for RRM*s is still under development. ICE Trade Vault Europe recommends that ACER develop strict requirements for RRM)s to ensure the security and integrity of the data reported to them. Additionally, ICE Trade Vault Europe recommends the publication of said requirements as soon as possible to allow RRM)s to begin building to these requirements, as these efforts require significant technical and personnel resources.
- Section 5 – ICE Trade Vault Europe recommends clarifying the diagram in Section 5 of the draft TRUM and defining the term “Registered Regulation Information Service.” Additionally, as stated in our attached letter to the European Commission with our comments to the draft implementing rules, ICE Trade Vault Europe believes that ACER would benefit by requiring those market participants and organised marketplaces to report to RRM)s rather than reporting directly to ACER. ICE Trade Vault Europe believes that ACER should only receive information from RRM)s to avoid an inundation of data from market participants who do not have the resources and/or expertise to adequately format and securely report data and organised marketplaces that utilise inconsistent formatting and data standards. Furthermore, third parties reporting on behalf of market participants should be required to comply with the RRM)s framework to ensure that market participants’ data is kept confidential and that third parties employ proper security processes and procedures.
- Section 5.1 – ICE Trade Vault Europe recommends that ACER or the European Commission publish an affirmative statement that those trade repositories registered under EMIR will be subject to an

accelerated and streamlined RRM registration process which requires them to demonstrate competency to receive, store and report physical energy trade data.

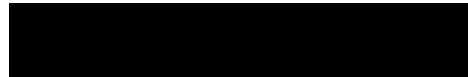
- Section 6.1.2 – ICE Trade Vault Europe recommends that ACER publish the draft text of Section 6.1.2 relating to the orders to trades data fields as soon as possible. This initiative will require extensive review, analysis and development by exchanges, RRMs and other market participants and as such, the market will need a significant amount of time to implement these requirements.

In summary, ICE Trade Vault Europe fully supports ACER’s efforts in examining and detailing the intricacies related to trade reporting for the wholesale energy market. Should you have any questions about the above recommendations or questions, please feel free to contact the undersigned.

Sincerely,



ICE Trade Vault Europe Limited



CC:

