

# Final Report

**Technical standards under SFTR and certain amendments to EMIR**





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## Acronyms and definitions used

AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFMs)
CM	Clearing Member
CCP	Central Counterparty
CP	Consultation paper on technical standards under SFTR and on certain amendments to technical standards under EMIR
CSD	Central Securities Depository
CPMI	Committee on Payments and Market Infrastructures
DP	Discussion paper on technical standards under SFTR
ECB	European Central Bank
EEA	European Economic Area
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”
ESCB	European System of Central Banks
ESMA	European Securities and Markets Authority
ETF	Exchange-traded fund
EU	European Union
FIX	Financial Information Exchange
FpML	Financial products Markup Language
FRA	Forward Rate Agreement
FSB	Financial Stability Board
GMRA	Global Master Repurchase Agreement
GMSLA	Global Master Securities Lending Agreement

ICMA	International Capital Market Association
IFX	Interactive Financial Exchange
IOSCO	International Organisation of Securities Commissions
ISIN	International Securities Identification Number
ISLA	International Securities Lending Association
ISO	International Organization for Standardization
ITS	Implementing Technical Standards
LEI	Legal entity identifier
LTV	Loan-to-Value ratio
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).
MIC	Market identifier code
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
MMF	Money-market fund
MMSR	Regulation (EU) No 1333/2014 of the European Central Bank of 26 November 2014 concerning statistics on the money markets
NCA	National Competent Authority
OJ	The Official Journal of the European Union
OTC	Over-the-counter
Q&A	Questions and Answers
REIT	Real Estate Investment Trust
RTS	Regulatory Technical Standards
SDLC	System Development Life Cycle



SFTR	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012
SMSG	Securities and Markets Stakeholder Group
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TR	Trade repository
TREM	Transaction Reporting Exchange Mechanism
UCITS	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
UTI	Unique Transaction Identifier
XBRL	Extensible Business Reporting Language
XML	Extensible Mark-up Language
XSD	XML Schema Definition

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# 1 Executive Summary

## Reasons for publication

This Final Report is published as part of ESMA's work on Level 2 measures under the Securities Financing Transactions Regulation (SFTR) as well as on certain amendments to the Level 2 measures under EMIR, in order to take into account legal developments as well as to ensure consistency, where relevant, between the frameworks of both regulations.

## Contents

Section 1 is the executive summary of the document. Section 2 explains the background to our proposals. Section 3 includes the summary of feedback on ESMA's proposals on the procedure and criteria for registration or extension of registration as TR under SFTR, on certain amendments to the similar EMIR requirements as well as the proposed way forward. Section 4 includes the summary of feedback on ESMA's proposals on the use of ISO 20022 reporting standards, the reporting logic under SFTR and the main aspects of the structure of an SFT report and the way forward. Section 5 covers the feedback to the requirements regarding data collection, transparency, aggregation and comparison of data and sets out the proposed rules for the relevant processes. Section 6 details the access to data by authorities following the feedback received. Section 7 includes the explanatory text of the ITS on data exchange between authorities. Section 8 contains the legislative mandate and section 9 refers to the opinion of the Securities and Markets Stakeholders Group. Sections 10 to 18 contain the final draft technical standards under Articles 4(9), 4(10), 5(7), 5(8), 12(3) and 25(4) of SFTR, as well as the amendments to the draft technical standards under Article 56(3) and 81(5) of EMIR. Section 19 contains a cost-benefit analysis of the SFTR rules.

## Next Steps

The draft technical standards under SFTR and the amended technical standards under EMIR are submitted to the European Commission for endorsement. In accordance with Article 10 of Regulation EU No 1095/2010, the European Commission has to decide whether to endorse the draft technical standards within 3 months.

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## 2 Background

### 2.1 SFT Regulation

1. Regulation (EU) 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse and amending Regulation 648/2012 (SFTR, hereinafter) responds to the need to enhance the transparency of securities financing markets and thus of the financial system. In order to ensure equivalent conditions of competition and international convergence, SFTR follows the FSB Policy Framework (detailed in Section 2.2). It creates a Union framework under which details of securities financing transactions (SFTs, hereinafter) can be efficiently reported to trade repositories (TRs, hereinafter) and information on SFTs and total return swaps is disclosed to investors in collective investment undertakings. The definition of SFT in SFTR does not include derivative contracts as defined in Regulation (EU) No 648/2012 of the European Parliament and of the Council (EMIR, hereinafter). However, it includes transactions that are commonly referred to as liquidity swaps and collateral swaps, which do not fall under the definition of derivative contracts in EMIR<sup>1</sup>.
2. The new rules on transparency provide for the reporting of details regarding SFTs concluded by all market participants, whether they are financial or non-financial entities, including the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied.
3. Given that the definition of all SFTs, except margin lending, includes reference to commodities either as the loan or as the collateral of an SFT, this paper has outlined a specific section (section 4.2.4.3) where SFTs involving commodities are discussed.
4. Furthermore, Recital 10 of SFTR indicates that “in order to minimise additional operational costs for market participants, the new rules and standards should build on pre-existing infrastructures, operational processes and formats which have been introduced with regard to reporting derivative contracts to trade repositories”. In that context, ESMA, to the extent feasible and relevant, is mandated “to minimise overlaps and avoid inconsistencies between the technical standards” adopted pursuant to SFTR and those adopted under EMIR. The legal framework laid down by SFTR should, to the

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<sup>1</sup> A collateral swap included in the scope would involve a securities financing transaction, in which a securities loan is collateralised with non-cash collateral.

extent possible, be the same as that of EMIR in respect of the reporting of derivative contracts to trade repositories registered for that purpose. This should also enable trade repositories registered or recognised in accordance with that Regulation to fulfil the repository function assigned by SFTR, if they comply with certain additional criteria, subject to completion of a simplified registration process.

5. In Recital 13 it is mentioned that ESMA should take into consideration the technical standards adopted pursuant to Article 81 of EMIR regulating trade repositories for derivative contracts and the future development of those technical standards when drawing up or proposing to revise the regulatory technical standards provided for in this Regulation.
6. Hence, it has been the legislators' intention that SFTR leverages substantially on key aspects of EMIR such as, among others, the establishment of the reporting obligation, the registration requirements for TRs and the establishment of levels of access to data, building on the sufficiency of some of the controls in place for the already registered TRs. In order to achieve the objectives of both Regulations and ensure the consistency of frameworks and approaches to the extent possible, ESMA is undertaking also certain amendments to the technical standards under EMIR, in particular those on registration of TRs and those defining the access levels of authorities.

## 2.2 FSB work

7. On 29 August 2013, the FSB published a *Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos* that set out final recommendations to address financial stability risks in relation to securities lending and repos (repurchase agreements<sup>2</sup>). The framework included recommendations for national/regional authorities to improve data collection on securities lending and repo markets to detect financial stability risks and develop policy responses, and for the FSB to develop global aggregates based on these data to assess global trends in SFT markets for the purpose of shadow banking risk monitoring.
8. Based on those recommendations, the FSB Data Experts Group (hereafter DEG) was established with the objective of developing standards and processes for global SFT data collection and aggregation. Such standards and processes would allow the FSB to collect periodically aggregated data on securities lending, repos, and margin lending

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<sup>2</sup> [http://www.financialstabilityboard.org/wp-content/uploads/r\\_130829b.pdf](http://www.financialstabilityboard.org/wp-content/uploads/r_130829b.pdf)

from national/regional authorities, based on granular information collected at the national/regional level. The standards and processes also included recommendations for data collection procedures for national/regional authorities that should help minimise potential problems in computing global aggregates, such as double-counting. The FSB consulted publicly on the proposed standards and processes on 13 November 2014. On 18 November 2015 the FSB issued a report setting out the finalised Standards and processes for global securities financing data collection and aggregation<sup>3</sup> (FSB November 2015 Report, hereinafter) for monthly reporting of SFT aggregates by national/regional authorities to the FSB, as well as six recommendations to national/regional authorities related to the collection of SFT data from market participants.

9. By the end of 2015 FSB established two subgroups on the Data Governance and Data Management. The Data Governance subgroup works on issues associated with the governance of the SFT data collection. Such issues include: (i) definition of the legal framework under which the data would be shared and transmitted to the global aggregator, and from the global aggregator to other parties; (ii) identification of legal obstacles for collecting and sharing aggregate securities financing data at global level as well as consideration of their solutions; assessment of confidentiality issues; (iii) development of the rules of access to the aggregate-level data; and (iv) consideration of publishing selected aggregated data.
10. Meanwhile, the Data Management subgroup works on technical issues to operationalise the global securities financing data collection and aggregation. The technical issues include: (i) definition of the template for national/regional authorities to report to the global aggregator; (ii) determination of the technical format (data structure definition) and channels for data transmission to the global aggregator; (iii) identification of the codes for classification; (iv) development of the detailed guidelines and definitions; and (v) preparation of pilot exercises in coordination with national/regional authorities to verify that the whole process is working properly. The work of both subgroups is on-going and ESMA will continue to monitor developments to ensure that implementation of the relevant technical standards remains, where possible, in line with the FSB data collection framework.

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<sup>3</sup> <http://www.fsb.org/wp-content/uploads/FSB-Standards-for-Global-Securities-Financing-Data-Collection.pdf>

11. In addition, the FSB issued on 25 January 2017 a report on *Non-cash collateral re-use: Measure and Metrics*, which aims to obtain a clearer understanding of global collateral re-use activities in securities financing markets. The report introduces a measure of non-cash collateral re-use and several related metrics, based on data elements that national/regional authorities should collect as part of their data collection on SFTs. In developing the Technical Standards, ESMA has taken the FSB work into account and the associated data elements have been included in the SFTR reporting framework.

## 2.3 EMIR and SFTR

12. As mentioned in previous sections, it has been the legislators' intention that SFTR leverages substantially on key aspects of EMIR such as, among others, the establishment of the reporting obligation (Article 4 SFTR), the registration requirements for TRs (Article 5 SFTR) and the establishment of levels of access to data (Article 12 SFTR), building on the sufficiency of some of the controls in place for the already registered TRs.
13. Furthermore, from a policy-making perspective, ESMA has also acquired substantial experience since the entry into force of EMIR. Based on it, ESMA has undertaken two amendments to the level 2 regulations under EMIR: on the one hand, to the technical standards on reporting and on the other, to the technical standards detailing the operational standards for data access, data comparison and data aggregation. Furthermore, ESMA has issued a comprehensive set of more than 40 Q&As addressing different aspects of the derivatives reporting framework – reporting logic and reporting technique, registration aspects and access to data.
14. ESMA has also gained experience as supervisor of the TRs and as part of the supervisory framework for the reporting obligation under EMIR. As a result, several additions are proposed to be included in the technical standards for registration under SFTR as well as to be taken into account in the technical standards under EMIR in order to ensure a consistent registration and supervision regime. In a similar fashion, the definition of data access levels under SFTR has taken into account as a basis the technical standards for access levels under EMIR, though it also incorporates certain differences resulting from the different economic nature of the transactions reported.
15. Furthermore, the supervision of the compliance with the reporting obligation under EMIR, has been a joint exercise with the relevant national competent authorities' framework. In this respect ESMA has also benefited from the immediate feedback regarding the

national implementation of the reporting obligation, the different issues related to it and the most important aspects to be taken into account for the successful establishment of the reporting framework under SFTR.

16. Most importantly, ESMA understands that the draft technical standards under SFTR have to ensure a sound basis for achieving high quality data since the commencement of the reporting obligation under SFTR and to constitute an accurate basis for the supervision of all the relevant risks related to shadow banking activities.

## **2.4 Statement about ESMA's empowerments under Art. 13 and 14 of SFTR**

17. In addition to laying down rules on the transparency of SFTs and on the operation of TRs, the SFTR also introduces new rules on the transparency of collective investment undertakings towards investors in periodical reports and pre-contractual documents.
18. According to Article 13(1) and (2), UCITS management companies, UCITS investment companies and AIFMs shall inform investors on the use they make of SFTs and total return swaps in the annual (UCITS and AIFs) and half-yearly (UCITS only) reports. The information on SFTs and total return swaps shall include the data provided for in Section A of the Annex of SFTR.
19. Article 13(3)(1) states that ESMA may, taking into account existing requirements under the UCITS and AIFM Directives as well as evolving market practices, develop draft regulatory standards further specifying the content of Section A of the Annex of SFTR in order to ensure uniform disclosure of data but also to take account of the specificities of different types of SFTs and total return swaps.
20. According to Article 14(1) and (2), the UCITS prospectus (Article 69 of the UCITS Directive) and the disclosure by AIFMs to investors (Articles 23(1) and (3) of AIFMD) shall specify the SFT and total return swaps which UCITS management companies or investment companies, and AIFMs respectively, are authorised to use and include a clear statement that these techniques are used. The prospectus and the disclosure to investors shall include the data provided for in Section B of the Annex of SFTR.
21. Pursuant to Article 14(3)(1), ESMA may, taking into account existing requirements under the UCITS and AIFM Directives, develop draft regulatory standards further specifying the content of Section B of the Annex of SFTR in order to reflect evolving market practices or to ensure uniform disclosure of data.

22. In contrast to most other empowerments for drafting regulatory technical standards in SFTR, the ones in Articles 13 and 14 are not obligatory, but optional, allowing ESMA to react to evolving market practices or inconsistencies in the disclosure of data by market participants.
23. In ESMA's view, the disclosure requirements as stipulated in the Annex of SFTR provide a sufficiently clear basis for the application by UCITS and AIFMs. Furthermore, there is at present no market practice regarding the transparency requirements as specified in Articles 13 and 14 and the Annex. ESMA is of the opinion, therefore, that further specifying the contents of the Annex by drafting regulatory standards would not be the best approach at this stage. However, ESMA will monitor the developments in market practice as well as the quality of reporting data in order to determine whether to work on these empowerments in future.



### **3 Registration requirements under SFTR and under EMIR**

#### **3.1 ESMA's mandates on technical standards on registration**

24. In accordance with Article 5(7) SFTR, ESMA shall develop draft regulatory technical standards specifying the details of all of the following:
- a. the procedures referred to in Article 5(2) SFTR and which are to be applied by trade repositories in order to verify the completeness and correctness of the details reported to them under Article 4(1) SFTR;
  - b. the application for registration referred to in Article 5(5)(a) SFTR;
  - c. a simplified application for an extension of registration referred to in Article 5(5)(b) SFTR in order to avoid duplicate requirements.
25. In accordance with Article 5(8) SFTR, ESMA shall develop draft implementing technical standards specifying the format of both of the following:
- a. the application for registration referred to in Article 5(5)(a) SFTR;
  - b. the application for an extension of registration referred to in Article 5(5)(b) SFTR.

With regard to Article 5(8)(b) SFTR, ESMA shall develop a simplified format to avoid duplicate procedures.

#### **3.2 Registration process under SFTR**

26. In terms of the process, under SFTR a TR should present its application for registration and extension of registration to ESMA, and ESMA will have 20 working days to assess the completeness of the application. As further indicated in Article 5(6) SFTR “where the application is not complete, ESMA shall set a deadline by which the trade repository is to provide additional information. After assessing an application as complete, ESMA shall notify the trade repository accordingly.” As provided in Article 7(1) of SFTR, once the completeness of the application is notified to the TR applicant, within 40 working days of the notification referred to in Article 5(6) of SFTR, ESMA shall examine the compliance of the application for registration and for an extension of registration with Chapter III of SFTR and adopt a fully reasoned decision accepting or refusing the registration and the extension of registration.

27. Finally, pursuant to Article 8(3) of SFTR, ESMA shall publish on its website a list of trade repositories registered in accordance with SFTR.

### **3.3 Technical Standards on registration**

#### **3.3.1 Registration framework**

28. Article 5(1) of SFTR requires the TRs to register with ESMA for the purposes of the fulfilment of the reporting obligation established in Article 4 SFTR. They need to register under the conditions and the procedure set out in Article 5 SFTR.
29. Article 5(2) SFTR further specifies that “to be eligible to be registered under this Article, a trade repository shall be a legal person established in the Union, apply procedures to verify the completeness and correctness of the details reported to it under Article 4(1), and meet the requirements laid down in Articles 78, 79 and 80 of Regulation (EU) No 648/2012.” Articles 78, 79 and 80 of EMIR are the ones establishing the general, the operational reliability and the safeguarding and recording requirements for registration of TRs under EMIR and underpinning the regulatory technical standards for registration of TRs under EMIR<sup>4</sup> (RTS 150/2013, hereinafter). RTS 150/2013 also covers the resources, methods and channels for transparency and data access, i.e. those covered by Article 81 of EMIR. Given that Article 12 of SFTR, where the transparency and data access aspects under SFTR are covered, has significantly greater scope than Article 81 EMIR, Article 81 EMIR is not explicitly mentioned in SFTR. However, Article 7 SFTR, which lays down the conditions for examination of the application for registration, clearly mentions that the examination of the application should be “based on the compliance of the trade repository with Chapter III of SFTR”. Chapter III is where both Articles 5 and 12 are included.
30. In the second sentence of Article 5(2) SFTR it is also mentioned that for the purposes of Article 5, i.e. the Article on conditions for registration, “references in Articles 78 and 80 of Regulation (EU) No 648/2012 to Article 9 thereof shall be construed as references to Article 4 of [SFTR]”. In Article 4(6) of SFTR it is provided that “[f]or the purposes of this Article, references in Article 80 of Regulation (EU) No 648/2012 to Article 9 thereof and to “derivative contracts” shall be construed as references to this Article and “SFTs”

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<sup>4</sup> Commission Delegated Regulation (EU) No 150/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository, OJ L52, 23.02.2013, p.25.

respectively”. Article 9 EMIR establishes the reporting framework under EMIR. From all the above, it stems that all the general, operational reliability, safeguarding and recording requirements for registration of TRs under EMIR should be taken into account also for the purposes of registering the TRs under SFTR and all the requirements with respect to the derivative contracts reported under Article 9 of EMIR should be understood as references to Article 4 of SFTR. For instance, the TRs must ensure the confidentiality, integrity and protection of data received under Article 4 of SFTR in the same way as they ensure the confidentiality, integrity and protection of data received under Article 9 of EMIR.

31. Chapter III SFTR includes also Article 11 which establishes the need for ESMA to charge fees to the TRs to “fully cover ESMA’s necessary expenditure relating to the registration, recognition and supervision of trade repositories as well as the reimbursement of any costs that the competent authorities may incur as a result of any delegation of tasks pursuant to Article 9(1) of [SFTR]”. In that respect, it can be understood that the payment of the relevant fees is essential condition for the TR to be registered under SFTR.

### 3.3.2 Ensuring consistency between RTS on registration under EMIR and the draft RTS on registration and extension of registration under SFTR

32. The RTS 150/2013 have proved to contain solid initial rules for the registration and further supervision of new market infrastructures such as the TRs. However, some additional aspects should be taken into account to fully cover the responsibilities that TRs are given under SFTR, in particular those under Article 5(2) of SFTR. Furthermore, ESMA wants to make use of the experience gained and the clarifications provided to the TRs in the course of the registration process under EMIR. That is, the experience gained during the registration of TRs under EMIR has shown that some provisions might need to be amended to further enhance the requirements for the registration of TRs in the EU. In order to ensure consistent requirements for registration of trade repositories and to level the playing field among entities applying to be registered under only one of the two reporting regimes, ESMA is proposing certain amendments also the EMIR registration rules.
33. SFTR explicitly requires the establishment of procedures that are applied by TRs in order to verify the completeness and correctness of the details of the SFTs reported to them. These procedures would need also to serve as the organisational requirement to be put in place to support the performance by the TRs of the relevant functions under Article 12

SFTR and in particular the operational standards to allow timely, structured and comprehensive collection data under Article 12(3)(b)(i) and comparison and aggregation of data across TRs under 12(3)(b)(ii). The availability of these procedures is a new requirement for TRs imposed by the SFTR and as such is applicable both in the case of applications for registration by new TRs as well as in the case of extension of registration for TRs already registered under EMIR. Furthermore, given that the verification of the completeness and correctness of data is essential for the functioning of the TRs; and taking into account that the provisions under Article 19 of RTS are less detailed (although materially similar in terms of their objectives as the ones developed under SFTR), ESMA proposed that the aspects discussed under Section 3.4.1 of this document are also taken into account for the purpose of amending RTS 150/2013.

34. In order to achieve consistent outcomes and to facilitate implementation, ESMA proposed draft RTS on registration and extension of registration under Article 5 of SFTR which, to the extent possible, built on the existing RTS 150/2013 and introduced the relevant amendments both to satisfy the new requirements under SFTR as well as to address those aspects where the practical experience has shown would be beneficial for the improvement of the registration framework for TRs under SFTR. ESMA considers that having one single set of standards under SFTR, instead of cross-references with amendments to existing standards will also facilitate the reading of the legal text.
35. One of the objectives of SFTR, indicated in its Recital 10, is to minimise additional operational costs for market participants and in order to ensure level playing field and avoid regulatory arbitrage for entities applying to provide services under either SFTR or EMIR, Furthermore, Articles 5(7) and 5(8) of SFTR require ESMA to ensure consistent application and uniform conditions of the application of Articles 5(1) and 5(2) of SFTR. Stemming from the above and in order to build on the pre-existing infrastructures, operational processes and formats which have been introduced with regard to the reporting of derivatives and the experience gained thereof, ESMA is proposing to amend the RTS on registration under EMIR, i.e. RTS 150/2013 in order to reflect the necessary updates introduced for the purposes of SFTR.
36. Given that Article 5(7)(c) of SFTR explicitly requires ESMA to develop RTS specifying the details of a simplified application for an extension of registration in order to avoid duplicate requirements, it is ESMA's intention to clearly indicate those articles which will be relevant in the case of simplified application for an extension of registration. ESMA proposal is included in Section 3.7 of this Final report.

37. As mentioned earlier, it is of utmost importance that the registration requirements under EMIR and SFTR are as consistent as possible in order to ensure level playing field across the entities that decide to apply only under one of the two regimes. Failing to do so, would mean that, for instance, the entities applying to be registered only under SFTR would have stricter requirements for registration, compared to those applying to be registered under EMIR. In order to address the above concerns, ESMA is proposing the alignment of both RTS, where applicable. The actual proposals are defined in the following paragraphs of this Section. Given that there is no possibility for a TR registered under SFTR to apply for extension of registration under EMIR, the aspects discussed under Section 3.7 should not be taken into account<sup>5</sup>.
38. ESMA proposes that all the amendments considered in Section 3.4 are taken into account also for the purposes of registration of TRs under EMIR.
39. Furthermore, given that the verification of the completeness and correctness of data is essential for the functioning of the TRs; and taking into account that the provisions under Article 19 of RTS are less detailed (although materially similar in terms of their objectives as the ones developed under SFTR), ESMA proposes that the aspects discussed under Section 3.4.1 of this document are also taken into account for the purpose of amending RTS 150/2013.

### **3.4 Provisions for registration for the purposes of SFTR and EMIR and summary of feedback**

40. ESMA incorporated all the provisions included in the existing RTS 150/2013 into the draft RTS on registration and extension of registration under SFTR, except those in Article 19 RTS 150/2013 that are explicitly referred to in Article 5(2) of SFTR and were included in paragraphs 56-58 of the Consultation Paper. ESMA proposed also to update Article 19 of RTS 150/2013 in order to ensure consistency.
41. Furthermore, based on the experience gained during the registration of TRs and their subsequent supervision, ESMA proposed in the CP that some of the existing provisions in RTS 150/2013 are better specified in order to strengthen the framework for the registration of the TRs under SFTR. Those provisions are detailed in the following paragraphs of this Section.

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<sup>5</sup> The provisions in Section 1.6 are specifically envisaged for TRs registered under EMIR that want to extend their services under SFTR. Given that there is no specific legal regime for TRs that are already registered under SFTR, in case they decide to extend its services to cover EMIR, they would need to reapply in full under EMIR.

42. With respect to the requirements regarding policies and procedures indicated in Article 2 of RTS 150/2013, ESMA proposed during the consultation process that it should be ensured that all the policies and procedures are approved by the TR's senior management. In order to create an effective framework and support for the governance of TRs, the policies should be approved by the Board, whereas the procedures by the senior management. For entities with a two-tier Board structure, it is for the applicant to provide the supporting information regarding the approval by the relevant governance structure. Furthermore, ESMA included an additional provision regarding the internal communication of the policies to the staff employed by the TR or dedicated to the TR. Very often the policy exists, but the TR's staff is not aware. Thus, effective internal communication of policies is essential for their implementation and effectiveness. In order to ensure the adequate training and communication on policies and procedures, ESMA proposed that there is a documented acknowledgement by the staff on their awareness with policies and procedures. The respondents have supported this proposal.
43. One of the most widely discussed aspects of registration of TRs by respondents to the consultation is the operational separation. The requirement under SFTR is the same as under EMIR. In that respect, ESMA proposed to further detail the information to be provided in the application for registration and the extension of registration under SFTR to describe the existence of operational separation between the repository activities under SFTR and those under other reporting regimes, EMIR included. Given that the provision of repository services will involve somehow different processes, and potentially different reporting entities, ESMA indicated that the entity applying for registration under SFTR or for extension of its registration should be able to demonstrate that there are separate procedures, staff and systems to support the services provided by the TR under SFTR. Furthermore, additional information regarding its implementation vis-à-vis facilities, suppliers and agreements will also contribute to a better assessment of the operational separation at the TR, which is a key element for the reliability of the TR service.
44. In the consultation feedback, the respondents mentioned that having separate staff should not be required, neither needed, in case the expected volume of SFTs can be handled by the already employed staff or where there might be legitimate reasons for combining staff, for instance in sales, compliance, clients' services / helpdesk, senior management, etc. Furthermore, some respondents suggested that requirement for separation of staff would introduce unnecessary risk as the experience of key personnel

cannot be replicated easily and will take time. Finally, some others restated the need to have the flexibility of keeping a single front-end for participants or a single participant access policy and procedure, but ensuring appropriate segregation and security of data received under the different regimes. ESMA takes note of the aforementioned aspects and understands that where common systems or resources might not introduce operational risks, such as the front-end of the TR, the authorities' access point or the use of the same staff working in sales, compliance, clients' services helpdesk, etc., there could be no need to duplicate resources. In those other cases such as validation, reconciliation or recordkeeping of data, where the different structure of the processes and applications would require separation, such separation should be effectively established. Therefore, ESMA reiterates the requirement for an adequate level of operational separation in order to achieve the resilience of the TR systems and to avoid contagion. The draft RTS has been amended to reflect the feedback provided and the way forward.

45. To ensure better system of internal control at the TRs, ESMA proposed an increased detail of the information to be provided concerning the TRs' internal control system and the internal audit function as well as the audit work plan. ESMA proposed the elimination of the reference to "internal review function", given that the relevant internal controls would already be specified by the above-mentioned provisions and such an internal review function is more relevant for credit rating agencies than for TRs. Some of the respondents mistakenly linked this amendment with the one on operational separation and the establishment of a 40separate Internal Audit Committee, while others requested that in case a TR is already registered under EMIR and has so far not been prone to findings and/or sanctions, or is being affiliated to a Regulated Market which is already strictly regulated, to not include this requirement within the extended registration. ESMA would not require the establishment of separate Audit Committee for SFTR related activities, if such committee already exists at the TR entity or group level. The respondents to the consultations did not comment any further the proposed enhancement of the requirements on internal control mechanisms.
46. ESMA also proposed that the TRs provide detailed business plans, specifying the expected level of reporting activity in number of transactions, defining and justifying the relevant fixed and variable costs identified with respect to the provision of repository function under SFTR and including positive and negative variations of at least 20% from the base activity scenario identified. This would enable ESMA to establish the baseline



for capacity and performance planning at the TR. While agreeing with the proposed approach, one respondent suggested that there would be limits to the details that TRs can accurately provide, as the information would be based on estimates. ESMA considers the detailed business plan information and estimates as a fundamental part of the application for registration and for extension of registration, in light of its economical and activity planning aspect, as well as to ensure a level playing field across the TRs. Given that no further feedback was received, ESMA proceeds as proposed.

47. TRs are highly reliant on outsourced services from different companies in their group or closely linked to their parent undertakings. In order for ESMA to better understand the outsourcing arrangements and to assess the existence of a reliable outsourcing framework, ESMA proposed the provision of certain specific information with respect to the outsourcing arrangements. Respondents have supported the proposal.
48. Concerning the access rules for reporting parties, based on the feedback received from consultation respondents, ESMA proposed that the TRs provide the possibility, but are not required, to establishing separate view-only accounts for the reporting counterparties, which are not report submitting entities where they would need it. Most importantly, this would further facilitate the transfer of counterparties' records between TRs and will level the playing field across TRs. To address some of the feedback received, it is worth noting that the technical solutions implemented and the fees are subject to the general requirements on access and on cost-relatedness and public disclosure of fees.
49. Furthermore, ESMA's proposal to establish a requirement for the TRs to provide a description of the channels used to disclose the information regarding the access by reporting parties<sup>6</sup> to the TR was agreed.
50. Regarding the assessment of the access policies and procedures, ESMA proposed that the TRs should better specify among the different types of users of the TR system including the TR internal users, the reporting participants, the non-reporting participants, the regulators, the third parties, the contractors, etc. These details should be taken into account also, where relevant, with respect to the access by view-only reporting counterparties. The proposal was agreed.
51. With respect to operational risk, ESMA proposed that in addition to the information already required, the TR should provide not only the description, but also a copy of any

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<sup>6</sup> Reporting parties are the entities which are participants of the TR and they may or may not be counterparties to a contract.



relevant policies and methodologies regarding the identification and mitigation of operational risk and any other material risk to which the applicant is exposed. This will enable ESMA to better assess the operational risk framework and methodologies applied by the TR. This proposal was supported.

52. ESMA's proposal on additional information with respect to the business continuity plan of the TR applicant was agreed by the respondents.
53. With respect to recordkeeping policies, ESMA proposed to include an amended version of the existing provision under Article 22(2) RTS 150/2013 in order to ensure that ESMA receives the actual policies and procedures and not a description of them or information on them. Respondents to the consultation agreed with the proposal
54. Furthermore, ESMA proposed that the TRs provide the procedure put in place to calculate the aggregate positions to be made publicly available in accordance with the RTS under Article 12(1) SFTR. Some respondents indicated their willingness to support further work on this aspect.
55. Concerning the availability of data to authorities, ESMA proposed that the TRs provide the relevant procedures to demonstrate how they ensure the integrity of the data made available to the authorities referred to in Article 12(2) SFTR and under Article 81(3) of EMIR. This proposal was agreed.

#### 3.4.1 Proposals and summary of feedback with respect to the procedures to verify the completeness and correctness of the data

56. As mentioned earlier, Article 5 of SFTR requires the establishment of procedures by the TRs in order to verify the completeness and correctness of the details of the SFTs reported to them. Similarly, the provisions under Article 19 of RTS are less detailed, although materially similar in terms of their objectives, as the ones developed under SFTR.
57. In the specific case of SFTR, these procedures serve as the organisational requirement for TRs to support the establishment of data quality mechanisms at the TRs as well as underpin the performance of data validations required under Article 12(3)(b)(i) of SFTR. Therefore, as part of their application for registration and their application for extension of registration, ESMA proposed that the TRs provide the following procedures to verify the completeness and correctness of the data:

- a. Authentication of users/participants;

- b. Schema validation;
  - c. Authorization/permission
    - (i) Prior to the reporting
    - (ii) During the reporting
  - d. Logical validation;
  - e. Business rules or content validation;
  - f. Reconciliation of data across trade repositories;
  - g. Feedback to participants.
58. ESMA proposed that the above procedures are included in the relevant business requirements documents of the TRs as well as the respective functional and technical specifications of the reporting system that are submitted to ESMA.
59. The respondents to the consultation provided strong support for the proposed framework. Furthermore, the inclusion in the draft RTS of specific reference to exclude the permission check in the situation of mandatory delegation, and the additional reference added to the operational standards for data collection included in section 5.1., was broadly supported by the respondents. As explained in greater detail in the DP, ESMA expects that when TRs on-board participants, the TRs are informed on whose behalf those entities can report, and then, during the on-going reporting, this is accurately checked to ensure the confidentiality of the data. Concerning the logical validations, ESMA expects that the TRs are able to reject illogical reporting scenarios, such as a report with action type “modification” without a prior report for the same UTI with action type “New”.

### **3.5 Provisions relating to new requirements for registration and extension of registration of TRs**

60. With respect to the identification of the competent authority, the requirement in RTS 150/2013 referred only to the parent undertaking of the applicant. In order to address the requirement laid down in Article 6 of SFTR and Article 57 of EMIR to notify the competent authority of the applicant in those cases where the applicant has been registered or authorised by a competent authority in a Member State where it is established, ESMA proposed that the applicant identify the relevant competent authority of that Member

State when applying for registration and for extension of registration. No specific comments against this proposal were received.

61. ESMA identified the need to establish a specific measurable or quantified requirement for the TRs to employ directly staff on particular key functions. In light of the core activity of the TRs, and based on the experience gained during the registration process, ESMA proposed that at least one person with education and experience in Information Technology should be directly employed by the TR in order to be able to assume responsibilities on IT matters at the TR. This requirement should ensure that there is a minimum level of IT expertise at the TR. One of the respondents pointed out that the type of IT experts might depend on the function that they would perform at the TR and that there would be unlikely that only one person is employed at group or entity level. ESMA reiterates the need to have at a minimum one person directly employed by the TR on IT matters and its qualification and experience should be adequate to carry out the relevant functions with regards to the TR.
62. Also related to the IT expertise at the TR, ESMA proposed at Board level there is a sufficient level of knowledge and experience on IT issues, and that a proportion of the senior management has academic degree, deep knowledge and experience on IT Management and SDLC. It should be for the TR and for ESMA to judge the sufficiency and adequacy of such minimum requirement in light of the projected or current level of activity of that particular TR. Two respondents pointed out that this requirement might not be needed at Board and senior management level and one of them emphasised that the suitability for the position could also be achieved through experience, rather than studies. Given the important IT aspect of the TR activity, ESMA reiterates the need for detailed information on the IT knowledge of members of Board and of senior management, while it will be for ESMA to judge the adequacy of such knowledge.
63. To better assess the TR's IT system, as a supervisor of TRs, ESMA proposed that, as part of the application for registration and extension of registration, the TR should provide a detailed description of the system supporting SFTR reporting including: (i) Business requirements, (ii) Functional specifications, (iii) Technical specifications, (iv) System architectural and detailed design (system, application, network), (v) Data model and data flows, (vi) Operations and administration procedures and manuals. This will provide ESMA with detailed information on the governance, scalability and reliability of the proposed system as well as on the technical performance and features of the reporting model and will allow ESMA to more accurately assess the compliance of the TR's

systems with the requirements under SFTR. No comments were received on this proposal.

64. In addition, following the requirement established in Article 12(3)(d) of SFTR for ESMA to develop technical standards specifying the terms and conditions under which the authorities are to have direct and immediate access to data held in TRs, ESMA proposed to include an additional provision where the compliance with the terms and conditions defined in the RTS under Article 12(3)(d) of SFTR is explicitly included. No comments were received on this proposal.
65. Furthermore, also stemming from the requirement established in Article 12(3)(b)(ii) of SFTR, ESMA proposed that the TRs have a procedure to allow for the timely, structured and comprehensive aggregation and comparison of data across TRs by the relevant authorities. This procedure should enable the TR to fulfil the relevant operational requirements set out in the technical standards under Article 12(3)(b)(ii) of SFTR. No comments were received on this proposal.
66. ESMA proposed that the TR provides a procedure to ensure that if its registration is withdrawn, the TR will be orderly substituted including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories. This requirement for portability is included in Article 79(3) of EMIR which is also applicable under SFTR, nevertheless it is considered important that the TRs provide practical information how exactly this will take place. Furthermore, ESMA proposed the inclusion of a requirement regarding the voluntary portability between TRs. The respondents agreed with this proposal.
67. Given the inclusion of the provisions on fees to be paid to ESMA as part of Chapter III of SFTR, ESMA proposed the inclusion of an additional requirement so that before a TR is registered or is extended registration under SFTR, it has paid the relevant fees established in accordance with a delegated act adopted under Article 11(2) of SFTR. ESMA considers also that such provision will provide additional transparency to the entities applying for registration and for extension of registration and will cover in a timely manner the necessary ESMA's expenditure relating to the registration of a TR pursuant to Article 11 SFTR. While there is no equivalent provision in EMIR, the registration framework under EMIR already includes the EMIR TR Fees Regulation<sup>7</sup>. The

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<sup>7</sup> COMMISSION DELEGATED REGULATION (EU) No 1003/2013 of 12 July 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories, OJ L279, 19.10.2013, p.4.

respondents requested the publication of the methodology under which the fees will be calculated for the correct assessment of this requirement. ESMA consulted on the technical advice under Article 11 of SFTR as well as on certain amendments of the ESMA's fees to TRs under EMIR in Q4-2016/Q1-2017.

68. Finally, and in order to ensure the protection of the TR's systems, in terms of confidentiality, integrity and availability, as part of their application for registration and extension of registration, ESMA proposed that the TRs should provide the relevant policies, procedures, as well as detailed information on the mechanisms and controls in place to protect TR data from cyber risks and cyber-attacks. There are several information security frameworks applicable to this aspect, being the CPMI-IOSCO's Guidance on cyber resilience for financial market infrastructures one of those. The respondents perceived very positively the reference to cyber risks and cyber-attacks and no further comments -to the ones received in the first consultation- were received on this aspect.

### **3.6 Requirements for new applicants under SFTR**

69. As previously stated, the existing RTS 150/2013 under EMIR is a solid initial basis on which the requirements for registration of TRs under SFTR registration can be defined. In this regard, ESMA has drafted the RTS that is included in Section 10. In order to be registered as a TR under Article 5 SFTR the entities applying for registration should fulfil all the requirements.

### **3.7 Requirements for extension of registration under SFTR**

70. SFTR establishes a framework for the extension of registration that is supported by a simplified application in order to avoid duplicate requirements. It is worth noting that the process and timelines for new registration and for an extension of registration are the same, as indicated in paragraph 26 of the Consultation Paper.
71. To avoid any duplicate requirements in the case of an application for an extension of registration, ESMA proposed that, unless there is any amendment of the information that has already been provided during the registration under RTS 150/2013 or the subsequent supervision of the TR, certain information is not provided for the purposes of Article 5 of SFTR. All respondents supported this proposal. The new information to be

provided by the TR as part of an extension of registration refers specifically to the updates needed to bring it in compliance with the requirements under SFTR.

### **3.8 Compliance with conditions for registration**

72. Pursuant to Article 55(4) of EMIR and Article 5(4) of SFTR, “a registered trade repository shall comply at all times with the conditions for registration”. Therefore it was the intention of the legislator that a registration of TR should be understood in a ‘living’ sense i.e. any registered TR, irrespective of when a TR was registered, it should be subject to and supervised based on the most current “conditions of registration”.
73. Therefore, following the entry into force of the amendments to the EMIR RTS on registration all TRs, both registered and prospective ones, are subject to the same conditions for registration, that is the provisions contained in the SFTR RTS and amended EMIR RTS. In that regard, it will be for the TRs to demonstrate to ESMA how they comply with the EMIR and SFTR requirements. Article 55(4) of EMIR and Article 5(4) of SFTR specify that TRs should notify ESMA material changes to the conditions for registration, so ESMA expects to receive the relevant notifications from TRs that will need to make the relevant changes to comply with the amended requirements.
74. ESMA understands that applying the same standards across EMIR and SFTR as conditions for registration is critical to achieve the following important objectives:
  - a. Level playing field among EMIR and SFTR and among “old” and “new” TRs, and
  - b. Better protection of clients of repository services.

### **3.9 Format of the application under SFTR**

75. As paragraph 25 of the Consultation Paper states, ESMA should also establish the format of the application and the application for extension of registration. The format of the application for registration under EMIR is set out in ITS 1248/2012<sup>8</sup>, which also established requirements that any information submitted to ESMA in an application for registration of a TR are provided in a durable medium, which enables its storage for

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<sup>8</sup> Commission Implementing Regulation (EU) No 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, OJ L352, 21.12.2012, p.30.

future use and reproduction. In order to facilitate the identification of the information submitted by a trade repository, it is requested that documents included with an application should bear a unique reference number.

76. ITS 1248/2012 has been a useful tool to cross-reference the documentation provided by the TR with the provisions of RTS 150/2013 and to easily verify the provision or omission of information to address the relevant legal requirements. ESMA proposed to establish the same format of the application for registration and of the application for extension of registration under SFTR. The respondents supported this proposal.

### **3.10 Format of the application under EMIR**

77. ESMA considers that there is no need to amend the existing ITS on format of application under EMIR.

## 4 Reporting under Article 4 of SFTR

### 4.1 ISO 20022

78. Article 4(10) of SFTR provides ESMA with an empowerment to specify the format of the required SFT reports with the objective to ensure a uniform application of the reporting obligation and, to the extent feasible, consistency with the reporting under EMIR and harmonisation of formats between trade repositories.
79. ESMA acknowledges that fully comprehensive and unambiguous rules regarding formats of information for reporting are indispensable to ensure quality and thus the usefulness of the data. Furthermore, ESMA also acknowledges that such rules should not be limited only to the relevant data standards, the length of fields and the allowable values, but also should specify a technical format and the common reporting templates in which reporting counterparties would submit the prescribed SFT data to TRs.
80. In the Discussion Paper, ESMA proposed to use ISO 20022 to standardise the reporting of SFTs, as ISO 20022 is a single standardisation approach (methodology, process and repository) to be used by all financial standards initiatives<sup>9</sup>. ISO 20002 is currently used for other regulatory reporting regimes and has widespread acceptance in the financial industry. In terms of the set of requirements for format and content for reporting data, ESMA considers ISO 20022 to provide open and transparent standards and to ensure that SFT reporting would be subject to robust governance from regulatory community.
81. Furthermore, ESMA proposed to use a harmonised XML schema in order to ensure full standardisation of the reporting to be submitted to the TRs, thus enabling the TRs to aggregate and provide data to NCAs without unnecessary data processing or transformations. A common XML schema enables also to embed basic data quality validations in that schema, allowing for the first verification of data when the reporting counterparties generate their reporting.
82. Overall the market participants agreed that ISO 20022 would comply with governance requirements and that they foresee no issues in using XML.
83. One respondent recommended that the use of ISO 20022 should be limited to the transmission of SFT data between trade repositories and authorities in order to allow smaller to medium market participants to avoid an onerous implementation of ISO 20022

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<sup>9</sup> Definition from <https://www.iso20022.org/>



and to provide market participants with the flexibility to use simpler technical reporting formats with their respective trade repositories. As ESMA highlighted in the Discussion Paper, the EMIR ITS on reporting defined the formats of the data to be reported, including relevant data standards (when available), length of fields and allowable values. However, these detailed rules have proved to be not sufficiently precise as they failed to cover some technical details. Consequently, the harmonisation of the entire reporting system was not ensured since the TRs implemented the reporting differently, e.g. by developing different report structures or by using different data element names. This resulted in inconsistencies in the information reported by the counterparties as well as in different practices across the TRs, thereby hampering the access to data and the correct aggregation and comparison of data across TRs. The use of standardised ISO 20022 reporting regime by all actors without exceptions would avoid such inconsistencies in the information that market participants report to TRs.

84. ESMA understands that other standards such as FpML may be used in other jurisdictions (e.g. United States) and that the agreement on one standard may cause a certain burden of implementation for smaller market participants. However, the benefits of using one common standard and harmonising the reporting regimes as much as possible across regulations outweigh the costs. The expectation is that smaller market participants will benefit from this harmonisation in the medium to long term.

## **4.2 Reporting logic**

### **4.2.1 Proposed approach**

#### **4.2.1.1 Proposed approach from entity perspective – determination of the reporting obligation based on the capacity of the market participant (i.e. principal vs other)**

85. The counterparties to an SFT are subject to the reporting obligation. Notwithstanding this, under Article 4(3), where a financial counterparty concludes an SFT with a small non-financial counterparty, the financial counterparty is responsible for reporting the SFT on behalf of the small NFC. Similarly, under the same Article, the management company of an UCITS or an AIF is responsible to report the SFTs that a UCITS or an AIF concluded.
86. ESMA described in the Discussion Paper that the definition of counterparties in Article 3 SFTR includes both financial counterparties and non-financial counterparties. Article 3 also provides the definition of financial counterparty and non-financial counterparty. For

the purposes of SFTR financial counterparty means: (a) an investment firm authorised in accordance with Directive 2014/65/EU of the European Parliament and of the Council; (b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council or with Regulation (EU) No 1024/2013; (c) an insurance undertaking or a reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council; (d) a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC; (e) an AIF managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU; (f) an institution for occupational retirement provision authorised or registered in accordance with Directive 2003/41/EC of the European Parliament and of the Council; (g) a central counterparty authorised in accordance with Regulation (EU) No 648/2012; (h) a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council; (i) a third-country entity which would require authorisation or registration in accordance with the legislative acts referred to in points (a) to (h) if it were established in the Union. Non-financial counterparty is defined as an undertaking established in the Union or in a third country other than the financial counterparties.

87. With regard to ETF, MMFs, and REITs, ESMA will be taking into account any future developments in EU regulations that define previously mentioned terms. ESMA stated already in the Discussion and Consultation Paper, that it intends to accommodate for those developments to the extent feasible when submitting these TS to the EC.
88. In terms of counterparty classification, there is already a classification that is proposed in the amendments to EMIR and it details the types of financial and non-financial counterparties. This is a classification that leverages on EMIR experience and it ensures consistency with other EU regulations also from the perspective of non-financial counterparties,
89. ESMA also consulted on the use of another classification system mentioned in the FSB November 2015 Report, which is the United Nations System of National Accounts 2008 (SNA 2008). The European System of Accounts (hereinafter referred to as 'the ESA 2010' or 'the ESA') is an internationally SNA-compatible accounting framework for a systematic and detailed description of a total economy (that is, a region, country or group of countries), its components and its relations with other total economies<sup>10</sup>. This option

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<sup>10</sup> European System of Accounts ESA 2010, Chapter 1, Paragraph 1.01.

would align SFT reporting with Money Market Statistical Regulation (MMSR) that already uses this classification when MMSR requires the reporting of the counterparty sector.

90. Based on the feedback provided, ESMA has decided to retain the EMIR-like classification of counterparties. Furthermore, ESMA understands that there are still certain edge cases regarding the current definitions of counterparties. Those cases include NFCs checking their status as small NFC and informing their counterparties, the reporting of trades between EU resident and non-EU resident counterparties as well as the definition of funds based on different regulatory definitions depending on the jurisdiction. These situations however cannot be fully covered at the level of technical standards hence on a case-by-case basis, ESMA would be providing guidance.
91. ESMA described in the Discussion Paper that a party to an SFT that acts on a principal basis, by transacting on its own account, would be referred as a counterparty of an SFT. The feedback to the consultations did not question this approach, thus it is retained.
92. ESMA stated in the DP that a party to an SFT that acts as an intermediary in the conclusion of an SFT and on behalf of a customer shall be defined as a broker. As explained in the securities lending scenarios a counterparty may use the services of a broker and a lending agent to conclude an SFT. In their answer respondents proposed to differentiate between a broker and a prime broker as defined in Directive 2011/61/EU<sup>11</sup> (“‘prime broker’ means a credit institution, a regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities;”) ESMA points out that – for reporting under Article 4 SFTR – “broker” is not identical with the definition of a “prime broker” as defined in Directive 2011/61/EU. Hence they should not be used interchangeably. Unless the management company of a UCITS/AIF carries out a brokerage function, it shall only be reported in the field Entity responsible for reporting. Furthermore, ESMA indicates that it is the responsibility of the entity that discharges its reporting obligation to identify correctly the main parties participating in the SFT.

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<sup>11</sup> DIRECTIVE 2011/61/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

93. A central counterparty (CCP) means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer. In certain occasions, a CCP may also hold banking or other financial services license. Regardless of that, a CCP shall report itself only as CCP.
94. ESMA stated in the consultation that a securities lending agent facilitates the conclusion of a securities lending transaction between two counterparties. It also organizes the allocation of collateral and the provision of the securities to be lent. If the agent lender acts on its own behalf and on its own book it is the counterparty of the SFT. In all other cases it will not be a counterparty to a trade. The role of lending agent is only applicable for securities lending.
95. Tri-party agents are the parties to whom the counterparties can outsource operationally and technically the collateral management of their SFTs. as a principal and not on behalf of other market participants.
96. CSDs and their participants are defined in detail in section 4.3.14. Depending on their role in the transaction, CSDs or the CSD participants can be either a counterparty, a lending agent or a tri-party agent.

#### **4.2.1.2 Approach from SFT perspective (transaction-only vs. transaction and position reporting of CCP-cleared SFTs)**

97. In the consultations, ESMA asked to what extent it would be useful to establish complementary position-level reporting for CCP-cleared SFTs, taking into account the lessons-learned from EMIR reporting. Specifically, position-level reporting can be used if the legal arrangement is such that the risk is at a position level. This would be the case when all trade reports made to a TR relate to products that are fungible and the individual trades previously reported to the TR have been subsequently replaced by a position report, as would be in the case between a clearing member and a CCP. For instance, under EMIR to avoid double-counting of the reports of trades and those of positions, the reports of the original trades must be terminated so that it is clear that they are no longer open.
98. ESMA also noted that the reporting of certain post-execution lifecycle events and collateral changes may be better or only possible at position level when the management of such events takes place at position level. Therefore, the SFTR reporting regime should support these cases. Therefore, consistent with existing reporting under EMIR, reporting

parties should have the option but not the obligation to report the details of the cleared SFTs at a position level should they prefer to do so.

99. In line with EMIR derivative reporting<sup>12</sup>, ESMA suggested establishing complementary position-level reporting for CCP cleared SFTs based on specific conditions. It was proposed to allow the counterparties to optionally report a single position-level SFT when the following conditions are met:

- a. The legal arrangement is such that the risk is at position level, the trade reports all relate to products that are fungible with each other and the individual trades have been replaced by the position. This is the case when novation takes place after netting of individual trades, the netted position results in a new contract, and a new UTI is generated for it. This could be the case for example, between a clearing member and a CCP.
- b. The original trades, i.e. at transaction level, have been correctly reported. It is not permissible to report only positions.
- c. Other events that affect the common fields in the report of the position are separately reported.
- d. The original trade reports (point b above) and reports relating to other events (point c above), where applicable, have reached a suitable “end of life state”. This should be achieved by sending early termination messages and then reporting the net position either as a new position or as an update to the existing position.
- e. The report of the position is made correctly filling in all the applicable fields in the counterparty-specific and transaction data, and, as appropriate, margin and collateral re-use table of fields.
- f. If these conditions are fulfilled met, then the reporting of subsequent updates, including valuation updates, collateral updates and other modifications and lifecycle events can be applied to the report of the position (as modifications etc., and keeping the same value of the Trade ID on the CCP cleared position) and not to reports of the original trades/events.

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<sup>12</sup> The conditions are defined in EMIR Q&As (TR Question 17): [https://www.esma.europa.eu/sites/default/files/library/2016-1176\\_qa\\_xix\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-1176_qa_xix_emir.pdf)

100. After clarifying in the Consultation Paper that the position level reporting would be optional, the majority of respondents noted it would be a welcome addition to the reporting regime. Some respondents noted that it accurately reflected market practice where a trade was cleared by CCPs. ESMA also notes that the Consultation Paper feedback almost universally pointed out that in the case of CCP cleared SFTs, it is not possible to report margin for individual SFTs. To allow the entities to correctly report the collateral and the margin for the CCP-cleared SFTs ESMA has included in section 4.3.6 of this report scenarios and a detailed explanation on the reporting of margin.
101. As a result, ESMA will retain the optional position level reporting regime for CCP-cleared SFTs.
102. However, ESMA notes respondents raised two issues in the Consultation Paper feedback which are detailed in the following paragraphs.
103. One respondent asked whether a similar complementary position level reporting regime could be instituted for bilaterally agreed SFTs. Unlike centrally cleared SFTs, ESMA understands that bilaterally agreed SFTs are not replaced by a single trade. Therefore, they would not fulfil the condition that paragraph 99a specifies and complementary position-level reporting would not be suitable for bilateral SFTs.
104. Another respondent was supportive of the proposal but noted that if ESMA expected the position level reports to match, counterparties would need to agree in advance whether they would report a position level trade and which individual position-level report would include. ESMA agrees with the point that counterparties will need to agree which trades to report as part of a position-level trade.
105. In response to both the Discussion and Consultation papers, respondents generally noted that the proposed data elements were sufficient to support both transaction-level and position-level reporting. The respondents suggested that a field setting out whether a report was intended to show a position or a single transaction would be helpful, ESMA concurs with this suggestion and is including this field in the reporting.
106. A new field on “level” with values “transaction” and “position” (Field 99 in Table 2) and a new action type on “position component” is included (Field 98 in Table 2) in line with the EMIR approach. An SFT contract that is to be reported as a new trade and also included in a separate position report on the same day would be identified as a “position component”. The action type is defined in section 4.2.2.1
107. One respondent asked ESMA to consider explicitly distinguishing between UTIs relating to an individual transaction and a position report. In ESMA’s view, this information can

be derived from whether the field Level indicates a report is for a single transaction or a position. Adding an extra position level UTI would potentially cause confusion and add to the reporting burden; therefore, ESMA will keep a single field relating to UTI.

108. Several respondents noted difficulties with reporting the execution timestamp. The respondents pointed out that counterparties only tended to use execution timestamp for internal purposes, meaning they would be unlikely to match during reconciliation. The respondents asked for the execution timestamp to be removed, or at the least not counted as a matching field. Although ESMA takes note of these difficulties and will require counterparties to report the Execution timestamp but allow for certain matching tolerance as detailed in section 5.1.2.3.
109. Some respondents also asked whether SFTs undertaken between two different entities within the same group would be excluded from the SFTR reporting requirements. In response to this, ESMA notes that the SFTR does not provide for intra-group reporting exemptions.

#### 4.2.2 SFT reporting logic

110. Article 4(1) SFTR sets out the requirement for counterparties to report not only the conclusion of the original transaction, but also the modifications of its terms and its termination.
111. To reduce the reporting burden on counterparties and to ensure that they can report data on the collateral separately from the data on the loan, ESMA has provided for this possibility. In practical terms the loan data will relate to (i) the securities or commodities on loan in the case of securities and commodities lending and borrowing SFT, (ii) the cash lent or borrowed in the case of repurchase agreement and buy-sell backs and sell-buy backs, as well as (iii) the cash lent or borrowed in the case of margin lending SFT. The other leg of the SFT will be the collateral.

##### 4.2.2.1 Action types

112. In order to enable the flexibility of reporting and at the same time ensure that all relevant data are provided for a given type of report, the reporting of an SFT would include a field Action type to specify how to process the content of report. The events that the SFTR explicitly mentions are the conclusion, modification and termination of an SFT and are subset of the actions that this field would distinguish.



113. Based on responses to the Discussion Paper, the Consultation Paper proposed a reduced list of Action types for SFT reporting. ESMA proposed to limit the number of Action types used to reporting changes to an SFT to “Modification of business terms” and “Other modification” in order (i) to reduce the number of Action types, and (ii) to distinguish between reports which entail modification to the business terms of the SFTs from those that do not entail such modification.
114. The majority of respondents proposed not to distinguish between the modification of business terms and modifications to reporting fields that would not be considered business terms. The respondents argued that it would be necessary to establish reporting rules that specify the reporting fields to which changes would be deemed a modification to the business terms and other modification. Furthermore, even with such reporting rules, it would be necessary to report other modifications with the modification of business terms if the two types of changes occur on the same day in order for the reporting parties to provide one report for changes to the same SFT.
115. Some respondents requested an additional Action type “Valuation Update” for providing changes in valuations as under EMIR reporting. ESMA agrees with this proposal, but would limit the use of this Action type to the securities lent or borrowed in a securities lending and securities borrowing as well as to the commodities lent or borrowed in commodities lending and commodities borrowing transactions. The aforementioned updates to valuations will generally occur on a daily basis. Consequently, if the quantity of the lent or borrowed securities or the quantity of lent or borrowed commodities is changed, such modification to the terms would almost always coincide with a valuation update. Therefore, ESMA expects the reporting parties to provide one report with the Action type “Modification” for the change to the terms and another report with the Action type “Valuation Update” for the new valuation.
116. ESMA also intends to implement an additional Action type “Collateral update” to report changes in collateral composition as well as changes in collateral valuations. Changes in collateral composition and in the valuation of collateral generally occur on a daily basis. When SFTs are collateralised based on a net outstanding amount without an explicit allocation of the collateral to an SFT, collateral updates would be reported independently of the underlying SFTs and the loan data of the underlying SFTs would be updated independently of the changes to the collateral. In the case that collateral is allocated at the trade level, changes in the loan data will usually coincide with changes to the collateral composition and collateral valuation. However, ESMA expects the reporting



parties to provide one report with the Action type “Collateral Update” for the changes in collateral composition and/or collateral valuation and one report with the Action type “Modification” for the change to the loan data.

117. As mentioned in paragraph 106, the respondents to the Consultation PaperCP supported the inclusion of an additional “Action type”, namely “Position Component”, to further align the reporting logic under SFTR with the one under EMIR. This action type will be used to report by a single action type the conclusion and immediate novation of an SFT concluded on a venue. Finally, and in order to ensure consistent reporting logic, ESMA establishes two specific action types for the provision of updates to the margin and collateral reuse data.
118. Given the right, but not the obligation of counterparties to report by T+1 information on the conclusion of SFTs and in order to establish a better calculation of exposures, ESMA consulted on the field Report business day. Following the consultation, ESMA has renamed the field and further specified the definition. Therefore, to describe each action type the counterparties will provide information on the date on which the reportable event pertaining to an SFT took place. In the case of Action types "Valuation update", "Collateral update", "Reuse update", "Margin update", the date for which the information contained in the report in question is provided. For instance, when a counterparty report on T+1 the snapshot of collateral as of day T, it should report T in the field Event date and the “Reporting timestamp will reflect T+1.

Table 1 – List of proposed action types	
Action type	Definition
New	Specifies that the report is for a new SFT. This action type is also used when CCP margins and collateral reuse are reported for the first time.
Modification	Specifies that the report modifies at least one field of a previously reported SFT. This includes also an update to a previous report that is showing a position in order to reflect new trades included in that position. Corrections of a previously reported SFTs, as well as valuations and collateral updates should be reported with the respective action types.
Error	Specifies the cancellation of a wrongly submitted entire report in case the SFT never came into existence or was not subject to SFTR reporting requirements but was reported to a trade repository by mistake.

Table 1 – List of proposed action types	
Action type	Definition
Correction	Specifies that the report corrects a previously reported SFT data owing to an error in the generation, processing or submission of the relevant SFT report. It is required to distinguish the correction of an error from a change of economic terms of a transaction.
Position component	Specifies a report in which an SFT is reported as a new trade, it is terminated and it is included on the same day in a separate position report pertaining to a CCP-cleared SFTs,
Collateral Update	Specifies a dedicated report to provide changes in collateral composition and collateral valuation.
Termination	Specifies a dedicated report to fully terminate an SFT prior to the contractually agreed end date, or to terminate an open-ended SFT.
Margin Update	Specifies a dedicated report to provide changes in initial and variation margin that a reporting counterparty posts with regards to CCP-cleared SFTs.
Collateral Reuse Update	Specifies a dedicated report that the reporting counterparty provides for reporting changes in the reuse of collateral, the reinvestment of cash or the margin lending funding sources.
Valuation Update	Specifies a dedicated report to provide changes to the value of lent or borrowed securities for securities lending and borrowing transactions or to the value of commodities for commodities lending and borrowing transactions.

#### 4.2.2.2 Types of SFT reports

119. A specific data element will define the specific type of SFT report, which would be the basis for determining the relevant reporting fields.
120. The reporting of a repurchase trade would document the detailed terms of a repo trade, which would comprise the loan and the collateral data.
121. Several respondents proposed to report buy-sell backs using the same reporting scheme as repos. Although ESMA agrees that the schema for repos could be used for the reporting of both repo and buy-sell back trades, fewer reporting fields would apply to buy-sell back trades. ESMA decided to retain a separate report for buy-sell backs to allow the implementation of business validation rules by type of report to ensure data quality.
122. The reporting of securities or commodities lending and borrowing report would provide the detailed terms of the trade which would comprise the loan and the collateral pertaining to this type of SFT.

123. The margin lending report would provide the outstanding balance and the detailed terms of the outstanding margin loan against the margin lending portfolio. The margin lending report would also include an element to report the individual securities in the portfolio against which the outstanding loan is collateralised.
124. The reporting of margin related to CCP-cleared SFTs allows the collateral provider and the collateral taker of SFTs to report the initial margin and variation margin deposited either to a clearing member or to a CCP. This would be the case for a clearing member depositing margin with a CCP to cover the counterparty risk of the CCP arising from the SFTs that the CCP clears for the clearing member. This type of report does not cover bilateral margins posted for non-cleared SFTs.
125. The reporting of reuse of collateral pertaining to SFTs would provide information on collateral reuse by the reporting counterparty. Collateral reuse would be reported independently of the underlying SFT and the counterparties from which the reporting counterparty has received the collateral, however the authorities would be able to link the reuse information with the relevant SFT through the use of the relevant ISINs.

**Table 2 – Valid combinations of Action types and Report Types**

		New	Modification	Error	Correction	Position component	Collateral update	Termination	Collateral reuse update	Margin update	Valuation update
Report types	Repurchase trade	X	X	X	X	X	X	X	-	-	-
	Buy-sell back	X	X	X	X	-	-	-	-	-	-
	Securities and commodities lending and borrowing	X	X	X	X	X	X	X	-	-	X
	Margin lending	X	X	X	X	-	X	-	-	-	-
	Margin	X	-	X	X	-	-	-	-	X	-
	Collateral Reuse	X	-	X	X	-	-	-	X	-	-

#### 4.2.3 Direction of the trade

126. Clear and consistent designation of the direction of the trade is crucial for the understanding of the counterparties' exposures and risks. In its initial proposal in the Discussion Paper ESMA suggested that the direction of an SFT is reported using the

same terms as already implemented under EMIR, i.e. buyer and seller. However, several respondents expressed the concern that those terms cannot be applied uniformly across different types of SFTs and would be particularly confusing in the case of securities lending and margin lending where those terms are not used.

127. Based on this feedback, ESMA modified the approach and proposed to report the direction of the trade with terms 'Collateral giver' and 'Collateral taker'. This approach should provide sufficient clarity to the reporting entities while at the same time allowing for use of the same terms across all SFT reports.
128. The majority of the respondents supported the new approach. As the arguments in favour, the respondents mentioned that the proposal provides a sufficiently clear description for all the market participants and the direction of the trade should be already identifiable from the legal arrangement under which the transaction was executed. Furthermore, respondents also commented that a single set of terms will simplify the reporting process.
129. The respondents that did not support this approach commented that the SFT-specific terms as defined in the respective master agreement are clearer given that market participants already use them. It was also suggested, that if the approach is maintained, the description of the field should clearly reference the SFT-specific terms used by the industry.
130. Based on the received feedback ESMA has decided to maintain the approach proposed in the Consultation Paper. Given that the actual term used in Directive 2002/47/EC on collateral arrangement is "collateral provider" instead of "collateral giver", ESMA decided to use consistently "collateral provider" in this Final report and the relevant technical standards. Additionally, the references to the SFT-specific terms (i.e. buyer/seller/borrower/lender) were included in the text of the technical standards, to provide further certainty regarding the correct designation of the direction of the trade. The amended rules read as follows:
  - a. In the case of repo trades and sell-buy backs, the buyer, that is the counterparty that buys securities, commodities, or guaranteed rights relating to title to securities or commodities on the opening or spot leg of the trade and agreeing to sell them at a specified price on a future date (closing or forward leg of the trade) shall be identified as the collateral taker. The seller shall be identified as the collateral provider.

- b. In the case of securities or commodities borrowing and securities or commodities lending, the lender, that is the counterparty that lends the securities or commodities, subject to a commitment that equivalent securities or commodities will be returned on a future date or on request, shall be identified as the collateral taker. The borrower shall be identified as the collateral provider.
- c. In the case of margin lending, the borrower, that is the counterparty to which credit is extended in exchange for collateral shall be identified as the collateral provider. The lender, that is the counterparty that provides the credit against collateral shall be identified as the collateral taker.

131. Furthermore, several respondents have raised additional questions concerning the reporting of the direction of the trade under particular scenarios. The paragraphs below provide clarifications only on the questions received in the consultation. However, ESMA might consider providing further guidance in the future, if needed.
132. In particular, in the case of unsecured securities lending transaction, the general rule used for securities lending transactions should be followed, i.e. the lender should be identified as the collateral taker and the borrower as the collateral provider.
133. Similarly, whether a securities lending transaction is cash driven or security driven does not have an impact on the determination of which party is collateral taker, and which is the collateral provider.
134. Finally, the margins exchanged between SFT counterparties are not considered relevant for the purpose of determination of the direction of the trade. The changes in bilateral or CCP margin requirements that are reported will not modify the original direction of the trade.

#### 4.2.4 Trade scenarios

135. This section of the Final Report includes the reporting scenarios that have been identified as the most common SFT scenarios. ESMA intends to publish formal guidance (Guidelines, Q&As) in this field, for greater clarity, but describes here already the main scenarios, so that market participants have a greater insight on the reporting logic. The entities in rectangular boxes with solid lines are counterparties. The entities in rectangular boxes with the dashed lines are other parties participating in the trade that should be identified in their respective role in the reported SFT, such as broker, clearing

member, beneficiary, tri-party agent, lending agent, etc. The solid lines with arrows between two entities represent the SFT loan and collateral flows, while the dashed lines refer to broker and agency relationships of the SFT.

#### 4.2.4.1 Repo and buy-sell back

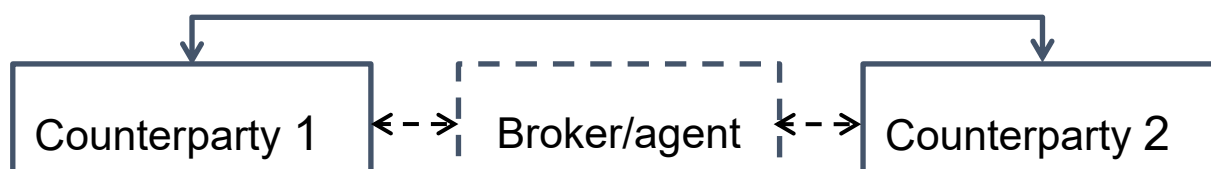
136. For the purpose of scenario depiction, ESMA has considered repo and buy-sell back together. However, as explained in paragraph 121 for the purposes of the actual reporting the counterparties or entities reporting on their behalf would need to identify whether an SFT is a repo or a buy-sell back.

##### 4.2.4.1.1 Repo trade without central clearing

137. The simplest form of a repo trade involves two counterparties, i.e. the lender or seller of the security (collateral provider) and the cash giver or buyer (collateral taker). The counterparties may choose to use the services of a broker/agent to initiate the trade with the counterparty. The broker/agent does not become a counterparty to the SFT when the broker/agent only acts on behalf of the counterparty and does not take the position in its own books. Counterparties may also choose to outsource the collateral management of their SFTs to tri-party agents, who, in this capacity, would not be considered as counterparty to the SFTs.

138. In the repo scenario 1 on a bilateral trade with the intermediation of a broker/agent, Counterparty 1 and Counterparty 2 have to report the trade and identify the broker/agent that intermediated the trade.

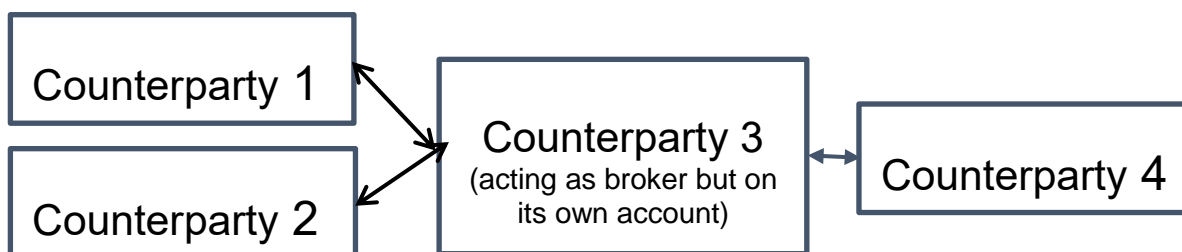
##### Repo scenario 1 - Bilateral trade with the intermediation of a broker/agent



- Counterparty 1 reports a repurchase transaction with Counterparty 2 and provides the LEI of the broker in a dedicated reporting field.
- Counterparty 2 reports a repo transaction with Counterparty 1 and provides the LEI of the broker in a dedicated reporting field.

- As the trade is bilateral, both counterparties would report in separate dedicated reporting field that the trade is not cleared. They would not report a CCP clearing member in a further dedicated reporting field.
139. For the case of UCITS/AIFs, these funds are considered as counterparties and should be identified as such with their LEI, while their management company would be identified in the field dedicated to the entity responsible for the reporting. In case of outsourcing, the field Broker shall also be filled in with the LEI of the portfolio management company.
140. In the repo scenario 2 on a bilateral trade with a broker acting on its own account one or more counterparties concludes a repo trade against a broker acting on its own account. As the broker acts on its own account, the broker becomes a counterparty to the trade and is subject to the reporting obligation.

Repo scenario 2 – Bilateral trade with a broker acting on its own account



- Counterparty 1 reports a repurchase transaction with Counterparty 3 and the field Broker is left empty;
  - Counterparty 2 reports a repurchase transaction with Counterparty 3 and the field Broker is left empty;
  - Counterparty 4 reports a repurchase transaction with Counterparty 3 and the field Broker is left empty;
  - Counterparty 3 reports three separate repurchase transactions, i.e. with Counterparties 1, 2 and 4 and the field Broker is left empty;
141. As the trades are bilateral, all counterparties report that the trades are not cleared in a dedicated reporting field, and they do not report a CCP clearing member in the further dedicated reporting field.
142. This scenario 2 would also cover the case where the broker acts as a principal to the transaction, as a “matched principal” broker (the field Broker should also be left empty).
143. Besides, as a subcase under this scenario 2, some respondents asked for clarifications for the case of an agent such as an investment manager interposing himself between

counterparty 1, or 2 and counterparty 3. In such a case, as long as this agent does not act as principal, there would not be any additional report and the identifier of this agent would only have to be populated in the dedicated field.

144. The scenarios depicted in the two diagrams under paragraphs 138 and 140 also apply to buy-sell back trade. The only difference would consist in the legal nature of the trade which encompasses a simultaneous buy and a sell, but it is expected to be reported as a single SFT. The feedback from consultation was that there is no need to distinguish repo and buy-sell back trade in the reporting framework. The information on the instrument type would be captured in the field Master agreement type (list: MRA, GMRA, EMA, ISDA<sup>13</sup>, documented buy/sell back, undocumented buy/sell back). One respondent asked for the need to capture undocumented buy-sell back since it is exceptional. However, as mentioned in section 4.2.2.2, the identification of the different types of SFTs is essential to accurately determine the relevant data fields that pertain to a given SFT.
145. In addition to these scenarios, some respondents to the consultation asked for a scenario describing the case of tri-party repo for non-cleared-trades. Because tri-party agents do not become counterparties to SFTs and hence do not act as principals, there is no additional scenario difference with repo scenarios 1 and 2. Counterparties using the services of a tri-party agent would only have to populate the dedicated field with this tri-party agent's identifier.
146. Therefore, answers to the consultation suggest that all scenarios depicting repo trade without central clearing were covered.
147. Finally, the respondents also agreed that the aforementioned two scenarios correctly describe the conclusion of buy-sell back and sell-buy back trades.

#### 4.2.4.1.2 Repo trade with central clearing

148. In a repo trade with central clearing, a CCP interposes itself between the two counterparties to the trade and becomes a counterparty. Therefore, the CCP is subject to the SFTR reporting obligation. Furthermore, in the case of establishment of interoperability arrangements between CCPs, (reportable) transactions between the two CCPs would also exist.
149. In the subsequent scenarios, the assumption is that both counterparties to the trade are following the same approach. However, the scenarios should be interpreted on the

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<sup>13</sup> ESMA clarifies that SFTs performed under an ISDA agreement should be reported.



assumption that there can be mixed scenarios, e.g. one of the counterparties using a clearing member and the other counterparty being the clearing member itself. This makes no difference to the basic conclusions.

150. It is the understanding of ESMA that the principal clearing model is currently the most common client clearing model in Europe for repos. Repo scenario 3, where a CCP interposes itself between the two counterparties that are clearing members, requires the reporting of two different trades, i.e. a trade between the Counterparty 1 and the CCP, and a trade between the CCP and the Counterparty 2, i.e. four reports in total to trade repositories. Feedback from the industry was that the reporting of trades under scenario 4 below is duplicative. This is unavoidable with dual-sided reporting but the presented method aims at ensuring the quality of reporting data. Furthermore, one or both counterparties to the trade can also delegate their reporting.

Repo scenario 3 - CCP interposing itself between the two counterparties that are clearing members



- Counterparty 1 reports a repurchase transaction with CCP. It reports that the trade is cleared in a dedicated reporting field and identifies itself with its own LEI as the counterparty and as the CCP clearing member in the dedicated reporting fields. The reporting field to identify the CCP specifies the LEI of the CCP.
- Counterparty 2 reports a repurchase transaction with CCP. It reports that the trade is cleared in a dedicated reporting field and identifies itself with its own LEI as the counterparty and as the CCP clearing member in the dedicated reporting fields. The reporting field to identify the CCP specifies the LEI of the CCP.
- CCP reports a repurchase transaction with Counterparty 1 and another one with Counterparty 2. It reports that the trade is cleared in a dedicated reporting field and identifies itself by its LEI as the CCP in the second dedicated reporting field that specifies the CCP. The field Clearing member should be filled with the ID of the relevant counterparty.

- In the case of a bilateral trade between Counterparty 1 and Counterparty 2 that the counterparties submit to clearing, Counterparty 1 and Counterparty 2 need to report also the original bilateral trade. All transactions should be linked through a unique code. Please see sections 4.3.4 and 4.3.11 for more information on this topic.

151. Taking into account industry feedback, it is worth mentioning that the scenario 3 should also cover the case where CCPs engage in SFTs as principals, i.e. for their own account, for one of the following purposes: cash collateral reinvestment, own treasury cash management. In this case, when the CCP reports its own account SFTs, the field Cleared should be filled in with 'false'.
152. Other variations of centrally cleared repo scenarios cover client<sup>14</sup> clearing models, where a counterparty is not itself a clearing member, but accesses a CCP via a third party who is a clearing member.
153. The principal clearing model underlies repo scenario 4 on a CCP interposing itself between the two counterparties that are not clearing members. It results in the creation of a distinct legal contract between the clearing member and its client (a 'back-to-back contract') in addition to the legal contract between the CCP and the clearing member. This is the most common client-clearing model in European CCPs. Four new trades result from the clearing of the original trade in the principal model, i.e. between each counterparty and its respective clearing member and mirror transactions between each clearing member and the CCP. In this case, all five actors (counterparties 1 and 2, clearing members 1 and 2, and the CCP) are subject to the SFTR reporting obligation, resulting in eight reports to the trade repositories.

#### Repo scenario 4 - CCP interposing itself between the two counterparties that are not clearing members



- Counterparty 1 reports a repurchase transaction with Clearing Member 1 (CM1). It reports that the trade is cleared in a dedicated reporting field and reports the LEI of its

<sup>14</sup> EMIR defines 'client' as an undertaking with a contractual relationship with a clearing member of a CCP which enables that undertaking to clear its transactions with that CCP.

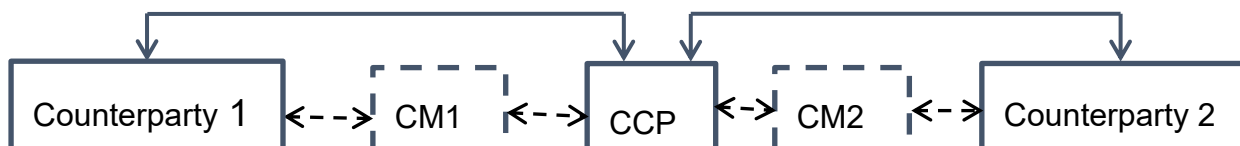
clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP;

- CM1 reports a repurchase transaction with Counterparty 1. It reports that the trade is cleared in a dedicated reporting field and identifies itself with its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP;
- CM1 reports a repurchase transaction with CCP. It reports that the trade is cleared in a dedicated reporting field and identifies itself with its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP;
- CCP reports a repurchase transaction with CM1. It reports that the trade is cleared in a dedicated reporting field and identifies itself with its LEI as the CCP in the dedicated reporting field that specifies the CCP, the field Clearing member is filled with the LEI of CM1 and the “CCP” is filled with the LEI of the CCP;
- The trades involving Counterparty 2, Clearing Member 2 and CCP should be reported as described above for Counterparty 1, Clearing Member 1 and CCP, respectively;
- In the case of a bilateral trade between Counterparty 1 and Counterparty 2 that the counterparties submit to clearing, Counterparty 1 and Counterparty 2 need to report also the original bilateral trade. All transactions should be linked through a unique code. Please see sections 4.3.4 and 4.3.11 for more information on this topic.

154. The third scenario of centrally cleared repos reflects the agency clearing model. Currently, this model is not used in Europe but may exist in other jurisdictions. It falls within the scope of SFTR reporting where SFTs are entered into by EU counterparties but cleared in foreign CCPs, where such models may exist.

155. In repo scenario 5 on a CCP interposing itself between the two counterparties that are not clearing members and the clearing members participate in agent capacity, two new trades result between each original counterparty and the CCP. Consequently, there will be four reports in total (two for the trade between the Counterparty 1 and the CCP and two for the trade between the CCP and Counterparty 2). In this scenario, clearing members CM1 and CM2 act as agents and do not become counterparties subject to the SFTR reporting obligation.

Repo scenario 5 - CCP interposing itself between the two counterparties that are not clearing members and the clearing members participate in agent capacity.



- Counterparty 1 reports a repurchase transaction with CCP. It reports that the trade is cleared in a dedicated reporting field and reports the LEI of its clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP of the clearing member.
  - Counterparty 2 reports a repurchase transaction with CCP. It reports that the trade is cleared in a dedicated reporting field and reports the LEI of its clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP of the clearing member.
  - CCP reports one trade with Counterparty 1 and another trade with Counterparty 2. It reports that the trade is cleared in a dedicated reporting field. The "Clearing member" field should be filled, respectively, with the LEIs of CM1 and CM2 and the field CCP should be filled with the LEI of the CCP;
  - In the case of a bilateral trade between Counterparty 1 and Counterparty 2 that the counterparties submit to clearing, Counterparty 1 and Counterparty 2 need to also report the original bilateral trade. All transactions should be linked through a unique code. Please see sections 4.3.4 and 4.3.11 for more information on this topic;
156. Taking into account industry feedback, scenario 5 should also cover both following cases: the "sponsored access to CCP" where asset managers (Counterparty 1 or 2 above) are "sponsored by a clearing member" (CM1 or 2 above) and the "direct clearing for buy side customers" where there could be another clearer (different from the clearing member) that acts as a clearing agent for the buy side customer (Counterparty 1 or 2);
157. A broker or a tri-party agent could also be involved in the central clearing scenarios, and, if so, should be reported as discussed in the bilateral scenarios.
158. The clearing scenarios depicted above would also apply in the same way to buy-sell back and sell-buy back transactions. The only difference would consist in the legal nature of the trade which encompasses a simultaneous buy and a sell, but it is expected to be reported as a single SFT. Therefore, for each of those transactions, a CCP and respectively a CM, would be included as counterparties, as applicable.

159. Taking into account feedback from the industry, ESMA clarifies that all repo scenarios (bilateral and centrally cleared) would also apply in the same way to buy-sell back.

160. Respondents indicated that according to market practice, there are buy-sell back trades that do involve a CCP. ESMA clarifies they would be reported in the same way as centrally cleared repos. These scenarios appear to describe the most relevant ways to conclude a cleared repo trade, and respondents to the consultation did not make any other significant scenario emerge.

#### 4.2.4.2 Securities lending scenarios

##### 4.2.4.2.1 Bilateral securities lending scenarios

161. In securities lending scenario 1 on a bilateral securities lending trade bilateral agreement without intermediary or “principal lender” model the beneficial owner of the securities (Counterparty 1) lends securities against collateral directly to another market participant (Counterparty 2) without an agent lender or a CSD participant acting as an intermediary.

##### Securities lending scenario 1 – Bilateral securities lending trade



- Counterparty 1 reports a securities lending transaction with Counterparty 2 without specifying a broker.
- Counterparty 2 reports a securities lending transaction with Counterparty 1 without specifying a broker.
- As the trade is bilateral, both counterparties would report that the trade is not cleared in a dedicated reporting field. They would not report a CCP, clearing member or tri-party agent or lending agent in the respective reporting fields.

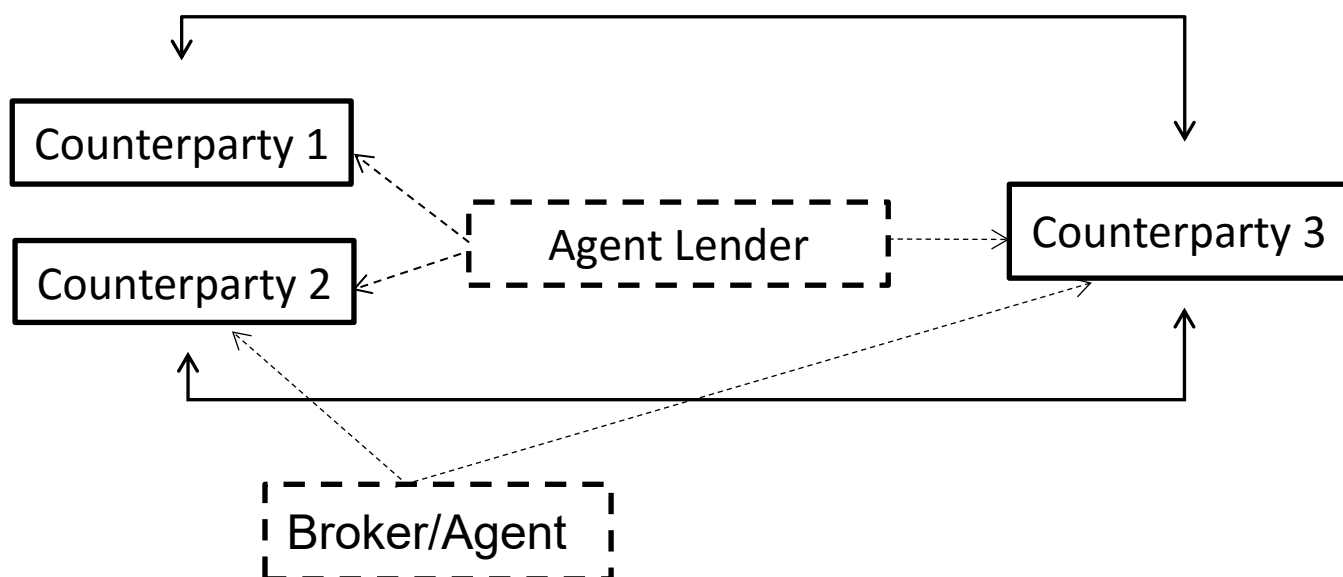
162. In securities lending scenario 2 on a bilateral securities lending trade with agency intermediary, two beneficial owners (Counterparty 1 and Counterparty 2) lend securities against collateral through an agent lender that acts as an agent to another market participant (Counterparty 3). This scenario can have certain variations in which either only one or several beneficial owners lend securities using an agent lender.

163. In this scenario and when there are multiple beneficial owners (securities lenders), the counterparties would need information provided by the agent lender in order to report their trades. The three counterparties report their trades to a TR (2 trades, 4 reports).

164. Two distinct cases exist in the scenario involving an agent lender:

- Disclosed agent lending agreement, where counterparties are disclosed at point of trade
- Undisclosed agent lending agreement where counterparties may not be disclosed until end of (T) trade date or even settlement date.

Securities lending scenario 2 – Bilateral securities lending trade with agency intermediary



- Counterparty 1 reports a securities lending trade with Counterparty 3 and the field Broker should be left empty
- Counterparty 2 reports a securities lending trade with Counterparty 3 and the field Broker should be populated with the LEI of the broker
- Counterparty 3 reports one trade with Counterparty 1 and another trade with Counterparty 2.
- As the trades are not centrally cleared, all counterparties would report that the trades are not cleared in a dedicated reporting field. They would not report a CCP clearing member. The LEI of the lending agent would be provided in the respective reporting field by Counterparties 1, 2 and 3.

165. In order to ensure that an SFT always has two counterparties, it was envisaged in the consultation to let the lending agent be considered a counterparty, in case the lending agent does not disclose the identity of the actual counterparty by the reporting deadline or by the value date, whichever happens first. This proposal was widely discussed by

respondents, several indicating this would create a misinterpretation of the industry risk profile – to which ESMA agrees. Therefore, in cases where the agent lender does not act as principal, the actual counterparties shall always be identified in accordance with the timeline for reporting of SFTs established in Article 4(1) of SFTR.

166. Taking into account feedback from the industry, the scenario 2 above would also cover cases where funds lend securities and aggregate them into an asset pool. The funds use a broker acting as an agent and the broker lends securities out of the pool.
167. In the third case, that is illustrated below, there are two beneficial owners<sup>15</sup> of the securities (Counterparties 1 and 2), that lend securities against collateral through an agent lender that acts as a principal to a third market participant (counterparty 4). The 3 counterparties and the agent lender report their trade to a TR (3 trades, 6 reports).

Securities lending scenario 3 - Securities lending trade with principal intermediary



168. In the example above:
- Counterparty 1 reports a securities lending transaction with Counterparty 3, which is also agent lender;
  - Counterparty 2 reports a securities lending transaction with Counterparty 3, which is also agent lender;
  - Counterparty 4 reports a securities lending transaction with Counterparty 3, which is also agent lender;
  - Counterparty 3 reports three securities lending transactions - one with Counterparty 1, another one with Counterparty 2 and a third one with Counterparty 4.
  - As the trades are bilateral, all counterparties report that the trade is not cleared in a dedicated reporting field. They neither report a CCP clearing member. The field Lending agent should be populated with the LEI of the lending agent which is Counterparty 3.

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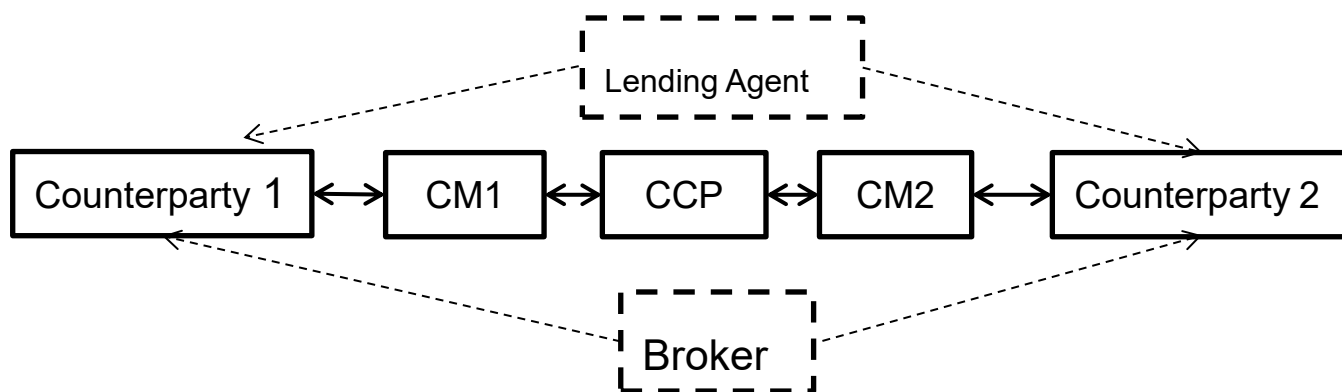
<sup>15</sup> There could be multiple (more than 2) beneficial owners or only one beneficial owner

#### 4.2.4.2.2 Securities lending scenarios involving central clearing

169. According to an ISLA September 2015 report<sup>16</sup>, few securities lending trades are currently cleared through a CCP, but this could change in the future. The model currently in place involves the novation of a securities lending trade which was initially concluded by two counterparties via an agent lender.

170. The model currently works as described also for repos with the difference that a special role is played by the lending agent.

#### Securities lending scenario 4: Securities Lending CCP model under development



171. In terms of reporting, it should be the same reports as for the principal clearing model for cleared repos described in paragraph 153 - 4 trades, 8 reports.

- Counterparty 1 reports a securities lending transaction with Clearing Member 1 (CM1), the field Cleared should be filled accordingly with “true”, the field Clearing member should be filled with the LEI of CM1 and the field CCP should be filled with the LEI of the CCP. The field Agent lender should be reported with the LEI of the agent lender. In case there is also a Broker involved, the field Broker should be reported with the LEI of the broker.
- CM1 reports a securities lending transaction with counterparty 1, the field Cleared should be filled accordingly with “true”, the Clearing member field Clearing member should be filled with the LEI of CM1 and the field CCP should be filled with the LEI of the CCP. The field Agent lender should be reported with the LEI of the agent lender. In case there’s also a broker involved, the field Broker should be reported with the LEI of the broker.

<sup>16</sup> <http://www.isla.co.uk/wp-content/uploads/2015/08/ISLAMarketReportSEPT2015.pdf>



- CM1 reports a securities lending transaction with CCP, the field Cleared should be reported accordingly with “true”, the field Clearing member should be reported with the LEI of CM1 and the field CCP should be reported with the LEI of the CCP.
- CCP reports a securities lending transaction with CM1, the field Cleared should be reported accordingly with “true”, the field Clearing member should be reported with the LEI of CM1 and the “CCP” should be reported with the LEI of the CCP.
- The trades involving Counterparty 2, Clearing member 2 and CCP should be reported in the same way as described above.
- In the case of a bilateral trade between Counterparty 1 and Counterparty 2 that the counterparties submit to clearing, Counterparty 1 and Counterparty 2 would need to also report the original bilateral trade. All transactions should be linked through a unique code. Please see sections 4.3.4 and 4.3.11 for more information on this topic.

172. In this central clearing scenario, a tri-party agent could also be involved. If so, its identifier would have to be populated in the dedicated field Tri-party agent.

#### 4.2.4.2.3 Other types of securities lending transactions

173. Some respondents highlighted the need to develop an additional scenario describing the case of so-called “fails-curing”. Fails curing refers to the securities lending and borrowing arrangements of CSDs amongst their participants, aimed specifically at reducing settlement fails.

174. The remedy of curing of settlement fails is sometimes part of the services which an entity has access to as part of its participation in a CSD. Securities are automatically borrowed upon detection of a securities shortage in the borrower’s account in relation to a delivery obligation, if the system finds the right securities in the account of an entity that has agreed to participate as lender in such a fails-curing programme. Credit or securities provided to avoid settlement fails are collateralised with the securities account of the borrowing CSD participant. ESMA confirms that such securities lending and borrowing arrangements are indeed subject to SFTR reporting obligations and shall be reported to a registered TR.

175. There are at least two different cases related to fails curing for which examples were provided in the course of ESMA’s consultations:

- a. **Case 1: CSD managing a securities lending mechanism for fails curing where a transfer of securities to collateralise a transaction**

**takes place.** In that case the SFT is reported by the two counterparties that are participants of the CSD. The CSD is identified as an agent lender (and, if relevant, as a tri-party agent). Collateral is reported if it is allocated from one counterparty's account to another. Usually the collateral is received from borrowers on an aggregate exposure basis and allocated to the lenders based upon the composition of the pool on an aggregate exposure basis.

- b. **Case 2: CSD managing a securities lending mechanism for fails curing without a corresponding transfer of collateral.** In this case, the collateral is not directly exchanged by the counterparties but remains in the borrower's account. The collateral pool within the CSD is also used for other purposes such as to support settlement in commercial bank money. The CSD provides a guarantee to the lender. A trade is reported by two counterparties that are members of the CSD. CSD is reported as an agent lender (and, if relevant, a tri-party agent). The field Uncollateralised SL flag is populated with "true".

176. The involvement of the CSD in an SFT transaction is not always a synonym to a fails curing securities lending transaction. There might be instances in which the CSD would enter into a securities lending transaction on its own account. In that case both the CSD and its counterparties would need to report the securities lending transaction in accordance with the relevant scenario in sections 4.2.4.2.1 or 4.2.4.2.2.

#### 4.2.4.2.4 Unsecured securities or commodities lending/borrowing

177. Article 3(7) SFTR defines securities or commodities lending or securities or commodities borrowing as a "transaction by which a counterparty transfers securities or commodities subject to a commitment that the borrower will return equivalent securities or commodities on a future date or when requested to do so by the transferor, that transaction being considered as securities or commodities lending for the counterparty transferring the securities or commodities and being considered as securities or commodities borrowing for the counterparty to which they are transferred". Since the definition does not refer to collateral, it appears that the scope of the SFTR reporting also covers unsecured securities lending transactions. It is worth noting however that outright sales and purchases of securities or commodities that do not fall under the definition of

SFTR for securities and commodities lending and borrowing transactions are not considered SFTs and shall not be reported under SFTR.

178. The SFTR reporting fields should cater for a possibility to report uncollateralised securities lending transactions. In such cases, it is important to explicitly identify an SFT as uncollateralised, so that the reports on such transactions could be distinguished from erroneous reports where collateral information is not reported by mistake. This is addressed by having a specific field “Uncollateralised SL flag” identifying an uncollateralised securities lending SFT in the collateral section. If the SFT becomes collateralised at a later stage, reporting entities should use collateral update with no rejection expected, despite the fact the initial trade was flagged as an uncollateralised SFT. If the counterparties however decide to early terminate the uncollateralised SFT and then book a collateralised SFT, they should submit a report with action type “Early termination” for the initial SFT and should report with action type “new” the collateralised SFT.
179. The field “Uncollateralised SL flag” should not be used when an SFT is collateralised but the collateral allocation at an ISIN level is not known by the reporting deadline of T+1. In that case, the counterparties should report the transaction as collateralised and provide the information on collateral in accordance with the relevant timelines included in section 4.3.7.

#### 4.2.4.3 SFTs involving commodities

180. The respondents to the Consultation Paper acknowledged that securities financing transactions are used to finance commodities. The types of transactions are sufficiently clear for unambiguous classification of SFTs used to finance commodities and generally occur on a bilateral basis as presented in securities lending scenario 1 in paragraph 161. Consequently, the respondents agreed that the above scenarios cover all securities financing transactions involving commodities that fall in the scope of the SFTR.
181. SFTs involving commodities are sometimes structured so that a counterparty has the right but not the obligation to repurchase. ESMA has not explicitly facilitated the reporting of transactions whereby the seller has the right but not the obligation to buy back the securities or commodities, as these are indeed considered to be out of scope. The leg of the other counterparty to such a trade, i.e. the counterparty that has the *obligation* to sell back, is also considered to be out of scope.

182. All types of commodities can be financed using SFTs, although commodities which can be stored, such as metals, certain type of agricultural commodities and oil, are most frequently involved. The commodities used are mostly standardised and conform to certain market standard specifications. However, this does not imply that all commodities meet contract specifications to be delivered in contracts traded on a trading venue.
183. There are currently no widely used codes for the identification or classification of commodities. ESMA recognises this and therefore does not request detailed identification of the commodities used in SFTs. However, in order to have an overview of the commodities used, the product details are asked in accordance with the RTS 23 of MiFIR. ESMA is aware that this classification has been designed solely for the purpose of the reporting of commodity derivatives. The requirement is to populate each of the commodity classification fields – i.e. Base product, Sub-product and Further sub-product - with the best available option. The value “OTHR” may be used in these fields when none of the values provided adequately describe the commodity at a certain level, irrespective of the hierarchy suggested by RTS 23. For example, in case the commodity involved is Zeebrugge Natural Gas, the base product is Energy (“NRGY”), the sub-product is natural gas (“NGAS”) and the further sub-product is other (“OTHR”).

#### 4.2.4.4 Margin lending

184. SFTR defines margin lending as “transactions in which an institution extends credit in connection with the purchase, sale, carrying or trading of securities”. This definition “does not include other loans that are secured by collateral in the form of securities”.
185. The consultations revealed that many different types of transactions might be captured in the scope of the “margin lending” definition. However, ESMA is of the view that most of these transactions only bear a limited relationship to SFTs and shadow banking. Expanding the scope of reporting to capture such transactions could undermine the purpose of the regulation by collecting large amounts of irrelevant information.
186. The SFTR recital highlights that the Regulation “*follows the FSB Policy Framework (...) under which details of SFTs can be efficiently reported*”. The November 2015 FSB standards for SFT data collection, developed as part of the FSB policy framework, “*only focus on margin lending provided to non-retail clients*”. Therefore, loans to retail clients, including Lombard loans and other forms of private banking, should be exempted from the reporting obligation.

187. Moreover, it has come to ESMA's attention that the "margin lending" SFTR definition may also capture other forms of lending to non-retail clients, including the financing of non-financial corporate clients. While non-financial entities remain within the SFTR scope, transactions related to mergers and acquisitions, corporate restructuring, investing in infrastructure and other forms of syndicated corporate lending should be exempted from the reporting obligation, due to their limited direct link with shadow banking.
188. Therefore, ESMA is of the view that, consistently with the FSB, the margin lending reporting obligation should only apply to prime brokerage margin lending, i.e. cash lending from prime brokers to their clients against collateral as part of a prime brokerage agreement. The features of prime brokerage margin lending are further described below.
189. Prime brokerage margin lending takes place on a portfolio basis, against a pool of collateral, by (re)using assets in the client's margin account as collateral. Clients may deposit or draw cash in different currencies from their account, implying that prime brokers may have simultaneous cash credits and debits with each client on their balance sheet. Margin lending is synonym of net cash debit in base currency, i.e. when the sum of cash debits and credits converted into the main currency of dealings with each client falls below zero. Margin loans may be extended and paid back several times per day, as real-time cash balances switch from positive to negative as a result of other prime brokerage services, such as securities dealing on behalf of clients. Therefore, margin lending is different from other SFTs, as there is no transaction settlement or central clearing. Every day, clients receive information from their prime broker(s) about their exposures, short market value, estimated collateral re-use, margin requirements and margin financing, on a net position basis.
190. The FSB requires the collection of data on short market value, which is the amount of securities lending taking place under prime brokerage agreement in order to cover the client's short position(s).<sup>17</sup> This short market value forms part of the portfolio on which the financing calculation is performed upon, and the securities loans made to a client are collateralised with the same portfolio used to collateralise margin loans extended to that same client. In order to avoid duplicated reporting, short market values should be reported together with margin loans, under the same UTI.

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<sup>17</sup> The market value of short position is used in some jurisdictions (such as the US) where there are margin requirements related to the value of the short position to cover for potential losses. In the EU, margining requirements under EMIR are the same for long and short positions.

191. Therefore, the reporting of prime brokerage margin lending shall take place on a daily position basis, at the end of the day, in the following two cases:

- a. When there is a net cash debit in base currency; the currency composition of the margin loan, including cash credits and debits in various currencies, should be included in the report (i.e. fields that are directly associated with the currency of the cash should be repeatedly as many times as necessary – see Table of Fields).
- b. When a client's short market value is positive.

192. The relationship between financial entities involved in margin loans is relatively simple compared to other types of SFTs. The basic prime brokerage margin lending scenario involves the borrower and the lender as the two counterparties. Lenders are prime brokers, while borrowers are usually investment funds. There is no central clearing involved. The margin lending scenario is illustrated as follows:

Margin lending scenario: Bilateral SFT



- Counterparty 1 reports a margin loan to Counterparty 2.
- Counterparty 2 reports a margin loan received from Counterparty 1.
- As the trade is bilateral, both counterparties would report that the trade is not cleared in a dedicated reporting field. They would not report a CCP, clearing member, lending agent nor a broker in the respective reporting fields. The use of a third-party custodian, and details associated with the custodial relationship such as bills, fees or any other types of claim, are not expected to be reported as they bear limited direct relevance to the margin loan.

193. Margin lending in the context of prime brokerage does not rely on standardised master agreements that govern most other types of SFTs, but typically on bilateral prime brokerage agreements between the lender and the borrower that specify the terms and conditions of the margin account. Prime brokerage agreements are negotiated between prime brokers and their clients.

194. Feedback received from the consultations indicated that margin lending generally takes place on an open basis, and that interest payments are based on a floating rate basis with a fixed spread added to it.

195. The FSB also recommends collecting some data elements specifically related to margin lending as end-of-day position snapshots, which have been included in the Table of Fields. However, based on the feedback received from market participants, the concept of “Free credit balances” does not seem to exist in the context of EU prime brokerage margin lending, nor can a similar measure be easily devised, reflecting in part contractual differences with non-EU jurisdictions. Therefore, ESMA will start collecting the necessary FSB data elements on “Free credit balances” at a later stage, once suitable alternatives have been identified.

## **4.3 Content and structure of the SFT report**

### **4.3.1 Structure of the report**

196. EMIR reporting groups the reporting of derivatives contract details into the two separate subsets of “Counterparty data” and “Common data” (data related to the transaction). In the case where one of the counterparties delegates the reporting to the other counterparty, this structure allows the latter to submit the “Common data” only once on behalf of the both counterparties.

197. ESMA asked in the Discussion Paper whether a similar approach should be applied to SFT reporting, in which case the required data elements would be grouped in the two major categories: (i) Data related to the parties involved in the SFT, such as counterparties, beneficiary, broker, clearing member, entity responsible for reporting and entity submitting the report, and (ii) Trade-related information on the economic terms of the loan and of the collateral. All the respondents that provided responses to this question broadly supported the split of data into separate subsets. Therefore, SFT reporting will maintain this approach.

198. Two respondents suggested that the data related to the reuse of collateral should not be included in the Counterparty data. ESMA agreed with this and the Consultation Paper proposed the inclusion of a separate table of fields detailing the information on reuse of collateral at the level of counterparty and ISIN, which will be then linked by the authorities to the underlying SFT data via the ISIN and the UTIs of the SFTs. The way data on reuse should be reported is discussed in Section 4.3.9 .

199. Furthermore, in order to gather complete and accurate data on the SFTs and the reuse of collateral, the counterparties would need to report information on the additional margin posted by the counterparties to SFTs to the CCPs that have cleared their SFTs.

200. Given that this information will be applicable at the level of exposure between the two counterparties, though it can be further linked with the individual SFTs, ESMA proposed in the Consultation Paper an additional table including the relevant details of the margins. It is worth mentioning that under EMIR the label of this data section is Collateral, however under SFTR, SFT have their own specific collateral. In order to avoid confusion and to align with the names of the fields with their equivalents under the proposed technical standards on reporting under Article 9 EMIR, ESMA proposed in the Consultation Paper the use of the term “margin”.
201. In summary, ESMA proposed in the Consultation Paper and received a broadly positive response to the grouping of the data elements in four categories:
- a. “Counterparty data”. Data related to the parties involved in the SFT, such as counterparties, beneficiary, broker, clearing member, entity responsible for reporting and entity submitting the report. Counterparty data should be reported per SFT.
  - b. “Loan and collateral data”. Data related to the economic terms of the loan and of the collateral, as well as the valuation of the latter. Where SFTs are collateralised on a net exposure basis, counterparties should report the collateral data separately from the underlying SFTs. In such cases, the loan data fields do not need to be provided when reporting collateral data. Please see sections 4.3.4 and 4.3.7.5 for further information in relation to the linking of SFTs with each other and with relevant collateral data.
  - c. “Margin data”: Data related to the margin posted or received pertaining to cleared SFTs. Cleared SFT margin data should not be reported per SFT. Instead, cleared SFT (initial and variation) margin data should be reported per the counterparty set of SFTs cleared through a Central Counterparty (“CCP”) which will not include the counterparty’s bilateral SFTs.
  - d. “Reuse data”. Data related to the reuse of collateral, reinvestment of cash and margin loan funding sources pertaining to all SFTs. As re-use information cannot be assigned to a specific SFT, collateral re-use data should not be reported per SFT. The collateral re-use data should also not be reported with regard to the counterparty from whom collateral has



been received. Instead collateral re-use data should be reported by the collateral taker at the counterparty (LEI) level (but only for those counterparties that re-uses collateral) and then at the collateral (ISIN) level. The authorities will be able to link the re-use information to the SFT counterparty and loan and collateral data through the use of the LEI and relevant ISIN data respectively.

202. Furthermore, one respondent to the Discussion Paper stated that the field Tri-party agent should be moved from the Counterparty data to the Loan and collateral data related information, provided that the tri-party agent will be part of the identification of the collateral pool and is expected to be the same for the both counterparties. In the Consultation Paper, ESMA sought further opinions on this statement. Likewise, ESMA stated in the Consultation Paper that it would also like to further investigate if there are any other specific fields that should be moved from the Counterparty data to the Loan and collateral data-related data or vice-versa. The responses received to the Consultation Paper indicated that the Tri-party agent is expected to be the same for both counterparties in many but not all cases, such as in the cases of Tri-party agent interoperability. Therefore, the field Tri-party agent will remain in the counterparty table.
203. A few respondents to the Discussion Paper highlighted that the fields should be classified in terms of their importance and not all the fields should be mandatory nor subject to reconciliation. In this context ESMA would like to clarify that not all the fields that are included in the Loan and collateral data-related data will be subject to the reconciliation. In particular, it is not envisaged to reconcile the free-text fields. Furthermore, thresholds should be defined for certain numerical fields, e.g. the market value or rates, to take into account potential deviations, e.g. resulting from the precision in terms of decimals and the rounding of values (Please refer to the section 5.1 of the Consultation Paper for more information on the validation rules and the reconciliation process).
204. Further to responses received to the Consultation Paper requiring further clarification of some issues, it should also be noted that:
- a. The reporting of SFT data can be delegated to more than a single reporting entity.
  - b. A SFT termination should not be reported where a SFT reaches maturity on the agreed maturity date

- c. A settlement fail prevention opened and closed intra-day is not exempt from the requirement to be reported as a SFT.
- d. The margin lending prime brokerage relationship between SFT counterparties should be reported using a single UTI code as described in detail in Section 4.2.4.4

## 4.3.2 Branches

### 4.3.2.1 Identification of branches

205. The reporting obligation under the Article 4 of SFTR is placed upon the counterparties to SFTs, whereas Article 2 of SFTR clarifies that the Regulation applies both to:

- a. the counterparties established in the Union including all their branches, and
- b. third-country counterparties, if the SFT is concluded in the course of the operations of a branch in the Union of that counterparty.

206. Therefore, the determination of the geographical location of the branch is necessary for:

- a. identifying the trades where both counterparties are subject to the reporting obligation and for which TRs must perform reconciliation;
- b. identifying potential cases of over-reporting;
- c. aggregating data by trade repositories, by relevant regulators and by the FSB
- d. providing accurate access to data to the authorities listed in Article 12(2) of SFTR.

207. ESMA has considered two possible alternatives for the reporting of location of the branch. Under the first approach, proposed by ESMA both in the Discussion and Consultation Paper, the location of the branch would be reported through an ISO country code pertaining to the jurisdiction where the branch is located. This designation, in combination with the LEI of the counterparty would be sufficient to meet the regulatory needs. The alternative approach leverages on the LEI ROC developments on assignment of the LEI codes to the international branches and would require that both the counterparty and its relevant branch are identified in the report through their LEIs.

Under this approach the regulators would be able to derive the information on the location of the branch from its LEI reference data.

208. While the views of the respondents to the Discussion Paper were split, a vast majority of the respondents to the Consultation Paper supported the approach proposed by ESMA, that is to use the ISO country codes. The respondents commented that those codes are sufficient to determine the location of the branch as well as that they are well known and already widely used. This approach would also be consistent with the reporting rules under EMIR and MiFIR. One respondent stated that branches of the investment firms should not be required (nor allowed) to obtain LEI. Furthermore, concerns were expressed regarding the availability of the branches' LEIs at the time of SFTR reporting start date.
209. At the same time, majority of those respondents that supported the use of ISO country codes proposed to allow for the use of the LEI codes for branches when those become available. Respondents commented that LEI codes will allow the regulators to access the LEI reference data and that the benefits of using LEIs would outweigh the possible initial limitations.
210. ESMA has considered all the arguments and acknowledged the interest in using the LEIs for branches expressed by many respondents as well as potential added value for the regulators. At the same time ESMA continues to believe that imposing LEIs for the purpose of identification of the branches' location before the framework is globally implemented would be premature.
211. Consequently, ESMA considers that LEI codes for branches should be allowed (and mandated) when the solution is fully implemented, i.e. when the LEI codes for branches are available and allow for the clear identification of the country of the branch. Until that time, ISO country codes should be reported.
212. ESMA will closely observe the implementation of the LEIs for branches to determine when those codes should start to be used by the entities reporting under SFTR. However, the technical standards already account for the two solutions (LEI codes and ISO country codes) with a view to develop future-proofed rules.

#### 4.3.2.2 Reporting of trades concluded by branches

213. The Consultation Paper included a table (see **Table 3**) which outlined the different scenarios to clarifying whether a transaction is reportable and, if so, who has the reporting obligation.

214. The last column with a header “Reportable under SFTR” refers to whether the transaction is subject to the reporting obligation under the SFTR. When the transaction is not reportable under the SFTR, the respective counterparties do not need to report it, irrespective of the location of the counterparties/branches. For example, the first five rows of the table illustrate the case that trades concluded between two branches of the same legal entity, even when the counterparty (identified with LEI 1) is subject to the reporting obligation, are not reportable, as set out in the last column.

**Table 3 - Reporting by branches**

	Reporting Counterparty	Country of the reporting counterparty	Country of the branch of the reporting counterparty	Reporting obligation	Other Counterparty	Country of the other counterparty	Country of the branch of the other counterparty	Reporting obligation	Reportable under SFTR
SFT1	LEI1	EU		YES	LEI1	EU	AT	YES	NO
SFT2	LEI1	EU		YES	LEI1	EU	US	YES	NO
SFT3	LEI1	EU	BE	YES	LEI1	EU	AT	YES	NO
SFT4	LEI1	EU	BE	YES	LEI1	EU	US	YES	NO
SFT5	LEI1	EU	CH	YES	LEI1	EU	US	YES	NO
SFT6	LEI1	EU		YES	LEI2	EU		YES	YES
SFT7	LEI1	EU		YES	LEI2	EU	AT	YES	YES
SFT8	LEI1	EU		YES	LEI2	EU	US	YES	YES
SFT9	LEI1	EU	BE	YES	LEI2	EU		YES	YES
SFT10	LEI1	EU	BE	YES	LEI2	EU	AT	YES	YES
SFT11	LEI1	EU	BE	YES	LEI2	EU	US	YES	YES
SFT12	LEI1	EU	US	YES	LEI2	EU		YES	YES
SFT13	LEI1	EU	US	YES	LEI2	EU	AT	YES	YES
SFT14	LEI1	EU	US	YES	LEI2	EU	US	YES	YES
SFT15	LEI1	EU		YES	LEI3	US		NO	YES
SFT16	LEI1	EU		YES	LEI3	US	CH	NO	YES
SFT17	LEI1	EU		YES	LEI3	US	AT	YES	YES
SFT18	LEI1	EU	BE	YES	LEI3	US		NO	YES
SFT19	LEI1	EU	BE	YES	LEI3	US	CH	NO	YES
SFT20	LEI1	EU	BE	YES	LEI3	US	AT	YES	YES
SFT21	LEI1	EU	US	YES	LEI3	US		NO	YES
SFT22	LEI1	EU	US	YES	LEI3	US	CH	NO	YES
SFT23	LEI1	EU	US	YES	LEI3	US	AT	YES	YES
SFT24	LEI4	US		NO	LEI3	US		NO	NO
SFT25	LEI4	US	AT	YES	LEI3	US		NO	YES
SFT26	LEI4	US	CH	NO	LEI3	US		NO	NO
SFT27	LEI4	US		NO	LEI3	US	AT	YES	YES
SFT28	LEI4	US	AT	YES	LEI3	US	AT	YES	YES
SFT29	LEI4	US	CH	NO	LEI3	US	AT	YES	YES
SFT30	LEI4	US		NO	LEI3	US	CH	NO	NO

**Table 3 - Reporting by branches**

	Reporting Counterparty	Country of the reporting counterparty	Country of the branch of the reporting counterparty	Reporting obligation	Other Counterparty	Country of the other counterparty	Country of the branch of the other counterparty	Reporting obligation	Reportable under SFTR
SFT31	LEI4	US	AT	YES	LEI3	US	CH	NO	YES
SFT32	LEI4	US	CH	NO	LEI3	US	CH	NO	NO
Note: AT and BE are ISO 3166-1 Alpha-2 codes for EU member states, US and CH are ISO 3166-1 Alpha-2 codes for non-EU member states.									
All codes are included for illustrative purposes.									
If the country of the branch is not provided it should be interpreted that the SFT was concluded by the headquarters									
The reporting of the data elements in italics might not be required.									

### 4.3.3 Beneficiary

215. ESMA outlined in the Consultation Paper several cases where beneficiary can be different from the counterparty: trades concluded by sub-funds (in line with EMIR General Question 1<sup>18</sup>) and trades concluded on behalf of another entity. Respondents were asked to provide examples of other scenarios, where beneficiaries and counterparties would be different.
216. Two respondents provided an example of a trust structure. In this case the trustee and the manager are the counterparty/contracting entity, but the trusts are effectively the beneficiaries of the rights extended to them under the SFT.
217. Two other respondents mentioned the case of the CCP operating omnibus accounts that the CCP can only identify its counterparty, i.e. its clearing member and that the clearing member can only identify the beneficiary. In this respect ESMA would like to confirm that the CCP should identify its counterparty (typically the Clearing Member) and it does not have to identify any client of that counterparty. No further comments were received on this aspect during the consultation on the CP, hence ESMA will maintain the proposed approach for the identification of beneficiaries.
218. ESMA indicated in the CP that the intended approach to identification of sub-funds was the same as explained in the EMIR General Question 1. Accordingly, if an SFT is concluded at the level of the sub-fund, the sub-fund should be identified as the counterparty (with an LEI). Otherwise, if the SFT is concluded at the level of the umbrella fund, the umbrella fund should be identified as the counterparty and the relevant sub-fund as the beneficiary.

<sup>18</sup> [https://www.esma.europa.eu/sites/default/files/library/2016-539\\_qa\\_xvii\\_on\\_emir\\_implementation.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-539_qa_xvii_on_emir_implementation.pdf)

#### 4.3.4 Linking of SFTs

219. As one of the key objectives of the SFTR is to increase transparency in the market for SFTs, regulators need to ensure information they receive on individual SFTs is as comprehensive as possible. This includes ensuring the information reflects both the exposures that build up between counterparties and bilateral networks between counterparties transaction in the markets. As set out in the Consultation Paper, the ability to link reports related to the same cleared SFT would allow regulators to:

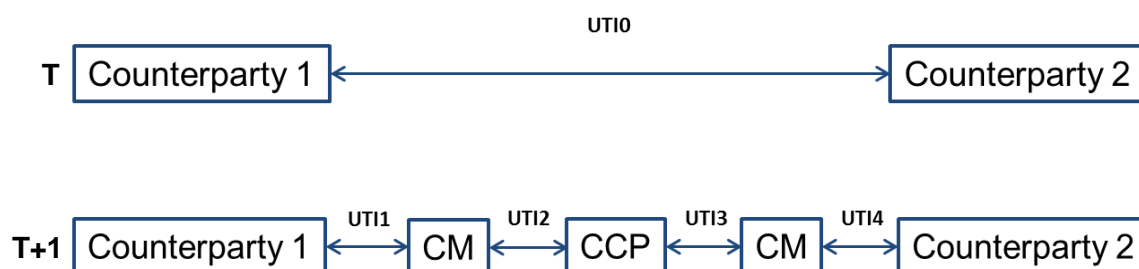
- a. Identify financial stability risks inherent in the structure of the market and the different roles that the counterparties play, for example whether certain participants in the market rely on a small number of counterparties. This is important because if certain counterparties make up a large proportion of an SFT market, the functioning of the market may be impaired if said entity faces difficulties (e.g. a liquidity crisis).
- b. Monitor the evolution of transactions over time and to link the original bilateral trade with the reports of post-clearing transactions for SFTs that are cleared on T+1.
- c. Ensure the quality of reported data.

220. As noted in the Consultation Paper, SFTs can evolve over time. For instance, novating contracts between two counterparties to a CCP will require further separate reporting and means that the link with the original bilateral agreement would be lost to regulators. This would hinder their ability to conduct network analysis on the SFT markets and decrease the usefulness of SFT data to regulators.

221. The Discussion and Consultation papers included proposals to link reports of bilateral trades related to a single centrally cleared SFT using a common identifier. This would populate the field Report tracking number field. ESMA proposed two alternative methods of populating the field Report tracking number in the Consultation Paper: 1) prior-UTI and 2) relative referencing.

222. Picture X illustrates the UTIs in the case of principal clearing model where an SFT (UTI 0) is cleared one day after it has been traded.

**Picture X: Principal clearing model when a trade is cleared on T+1.**



223. The linking method based on a prior-UTI follows the work being carried by CPMI-IOSCO with regards to OTC derivatives. It would require the counterparties to the original bilateral transaction to provide prior-UTIs (i.e. the UTIs of the bilateral trade before clearing) in the post-clearing reports. The number would then be propagated to the clearing members (if they are used). Where the reports of original bilateral trades are not required (i.e. for SFTs traded on trading venues and cleared on the same day), the needed identifier could be generated by a trading venue and passed onto the counterparties. Table 4 below shows how the UTI and reporting tracking number fields of reports related to a CCP cleared SFT would be populated in the case of principal clearing model:

Table 4 – Illustration of the linking proposal by using prior - UTIs				
Report Number	UTI of the trade	Reporting counterparty	Other counterparty	Common identifier (Report Tracking Number field)
1	UT11	Client 1	CM 1	UT10/A <sup>19</sup>
2	UT11	CM 1	Client1	UT10/A
3	UT12	CM 1	CCP	UT10/A
4	UT12	CCP	CM 1	-
5	UT13	CCP	CM 2	-
6	UT13	CM 2	CCP	UT10/A
7	UT14	CM 2	Client 2	UT10/A
8	UT14	Client 2	CM2	UT10/A

<sup>19</sup> “A” stands for a report tracking number generated by the trading venue. This number is populated where an SFT is traded on a trading venue and cleared on the same day as traded.

224. Taking into account the feedback to the Discussion Paper, in particular the concerns about the potential cost of making changes to CCP infrastructure to store the additional identifiers, ESMA proposed not to require CCPs to report the field Report Tracking Number. This means that, as proposed in Table 4, the prior-UTI would be reported only by the counterparties to the original bilateral trade and, if relevant, clearing members. It would not be a matching field. This would avoid the need to transfer the Report tracking number through the whole chain but would still provide the regulators with an audit trail. Authorities would be able to reconstruct the linked trade without CCPs reporting the original UTI generated by the two counterparties.
225. Where the counterparties to the original SFT are clearing members themselves, they would have to include the prior-UTIs in the post-clearing reports, and the number would not have to be propagated further down the chain.
226. The responses to the Consultation Paper were rather evenly split between support for the prior-UTI and relative referencing proposals. However, ESMA notes the majority of support for the relative referencing proposal was based on cost of implementation. ESMA asked for specific costs for both proposals in the Consultation Paper but respondents were unable to provide them and only provided cost estimates related to the implementation of SFT reporting in general. One respondent noted that the prior-UTI proposal would be more transparent, and others noted that it would be operationally simpler than the relative referencing proposal. In addition, feedback to the Discussion Paper requested that ESMA ensure its approach to linking SFTs was as closely aligned to the CPMI-IOSCO prior-UTI work as possible.
227. On the basis of alignment with the CPMI-IOSCO work as well as operational simplicity and transparency, ESMA will require the field Report tracking number to be populated using the prior-UTI approach.
228. Almost all respondents agreed with the proposal to exempt CCPs from populating the report tracking number on the basis it would reduce the cost and reporting burden on the industry. Therefore, ESMA will not require CCPs to populate the field Report tracking number.
229. Some respondents mentioned that prior-UTI generation would not take place where a trade is agreed to be cleared instantly. In these cases the counterparties to the trade will therefore never record a trade with each other, as they will instead record a trade with a CCP as counterparty. There is therefore no prior-UTI generated, so it cannot be forwarded on for onward reporting.



230. In response to this, ESMA would like to reiterate that, in line with the reporting logic also used for EMIR:

- a. The reports of the original bilateral trades will not be required if the trades are conducted on a trading venue and are cleared on the same day.
- b. The reports of original bilateral trades are required for trades that are cleared one day after they have been traded (or later) and/or that are not traded on a trading venue. Such reports will have to be subsequently terminated when the reports on the transactions post-clearing are provided.

231. The reports of original bilateral trades are not required where SFTs are instantly cleared (i.e. under open offer clearing model) as such the prior bilateral trades between the two counterparties do not exist. In this case, the counterparties will not be required to report a report tracking number where the trade has not been traded on a trading venue. Where an SFT has been traded on a trading venue, the counterparties will be required to report a report tracking number generated by the trading venue for the linking purposes.

232. One respondent to the Consultation Paper asked whether CCPs can be exempt from reporting the tracking number when the SFT is cleared on the same day as it is concluded. Assuming that this SFT is traded on a trading venue and thus the initial bilateral trade does not have to be reported, ESMA would like to confirm that the CCPs would have to report the transaction reference number generated by the trading venue.

233. One respondent asked for clarification on how it should report a trade on behalf of an SME/Non-financial counterparty under Article 4(3) as the prior-UTI will not be available to it. ESMA would like to clarify that although non-financial SMEs are exempted from the reporting obligation if they transact with financial counterparties, such transactions are not exempted from the requirement to generate a UTI. In this case, reports including transaction reference numbers (prior-UTIs) would have to be provided by the financial counterparty and its respective clearing member (if they are involved).

#### 4.3.5 UTI generation

234. In order to ensure that UTIs are unique, consistent and known to the both counterparties before the reporting deadline, it is necessary to clarify which entity (counterparty or a third party) is responsible for the generation of the code and its timely transmission to the counterparty/counterparties.

235. Given that currently, there is no global Unique Trade Identifier for the SFT transactions that could be applied, ESMA proposed to include in the technical standards specific rules aligned with the one included in the revised draft ITS on reporting under Article 9 of EMIR.
236. All the respondents expressed support for the inclusion of the clear rules on the UTI generation responsibility into the technical standards. Some respondents however have expressed concerns about a specific rule or provided additional suggestions.
237. In particular, a few respondents disagreed with the last step of the UTI generation flowchart, according to which the UTI should be generated by the collateral taker. As explained by the respondents, in the case of the securities lending this rule would typically assign the generation responsibility to the buy-side clients, i.e. the less sophisticated counterparty. ESMA acknowledges this concern and believes that it is appropriate to apply different tie-breaker logic for the securities lending transaction, in which case the UTI should be generated by the collateral provider.
238. Furthermore, one respondent disagreed with placing the counterparties' agreement as the second step of the UTI generation flowchart, stating that this could result in the uncertainty in the determination of the counterparty responsible for the generation and, consequently, could disrupt the reporting flow. ESMA considers that in the case where counterparties do not have any agreement in place, this risk of uncertainty regarding the UTI generation responsibility would be mitigated as long as further steps in the flowchart are clearly defined.
239. Similarly, one respondent highlighted that in the case where a bilateral agreement between the counterparties exists, a UTI agreed between the counterparties would need to be used even if the trade was done on a trade confirmation platform. In this respect ESMA would like to clarify that the counterparties are allowed to agree for which trades the UTIs should be assigned in accordance with step 2 (i.e. based on the counterparty agreement) and in which cases further steps for determination of the UTI generation responsibility should be followed. In the example provided by the respondent, the counterparties could possibly agree that any procedure set out in the bilateral agreement should not be applied to the centrally confirmed trades.
240. Furthermore, one respondent requested clarification whether the counterparties' agreement could assign the UTI generation responsibility to a third party. In this context, it is important to make clear that the UTI flowchart determines the entity that is ultimately responsible for the timely generation and transmission of the UTI, however such entity

can effectively delegate the actual generation to a third party. Such delegation could be put in place also under the step 2 of the flowchart.

241. One respondent commented on the fact that the entity which is assigned the UTI generation responsibility might not be in position to do so, e.g. a trading venue would know only the agent lender, but not the beneficial owner. ESMA is aware of the possible current limitation in the flow of information between the parties involved in the trade, however it is considered that the proposed rules would assign the generation responsibility to the most adequate party in the vast majority of the cases.
242. One respondent commented that in the case of margin lending only one UTI should be generated for each prime brokerage relationship (i.e. each prime broker will have a single UTI per client). Given that margin loans will be reported on a position basis, ESMA agrees with this approach which will facilitate reporting and minimise costs, while allowing authorities to monitor margin lending in a meaningful way.
243. One respondent asked who should generate the UTI in the case where two interoperable CCPs are involved in the clearing. ESMA considers that in this very specific case the two CCPs that have the interoperability arrangement in place should agree on the UTI generation responsibility.
244. Finally, a few respondents suggested to align the UTI generation rules with the guidance provided by the CPMI-IOSCO, once finalised. In this context ESMA would like to note that the proposed flowchart is broadly aligned with the UTI guidance except for the placement of the counterparties agreement at the top of the flowchart. However, the counterparties that would prefer to apply the logic consistent with the CPMI-IOSCO guidance<sup>20</sup> for derivatives, will be in position to do so by not entering into an agreement under the step 2. Furthermore, the CPMI-IOSCO guidance contains additional rule on the determination of the UTI generation responsibility in the case of cross-jurisdictional trades. Understandably, similar rule cannot be imposed unilaterally by ESMA for the purpose of SFT reporting, therefore in the case of cross-jurisdictional trades the UTIs reported under SFTR might not necessarily be the same as the ones reported by the other counterparty under an equivalent reporting regime.
245. Several respondents have provided further comments related to the means and timeliness of the UTI transmission, rather than to the UTI generation logic per se. In particular, the respondents proposed to include in the technical standards specific

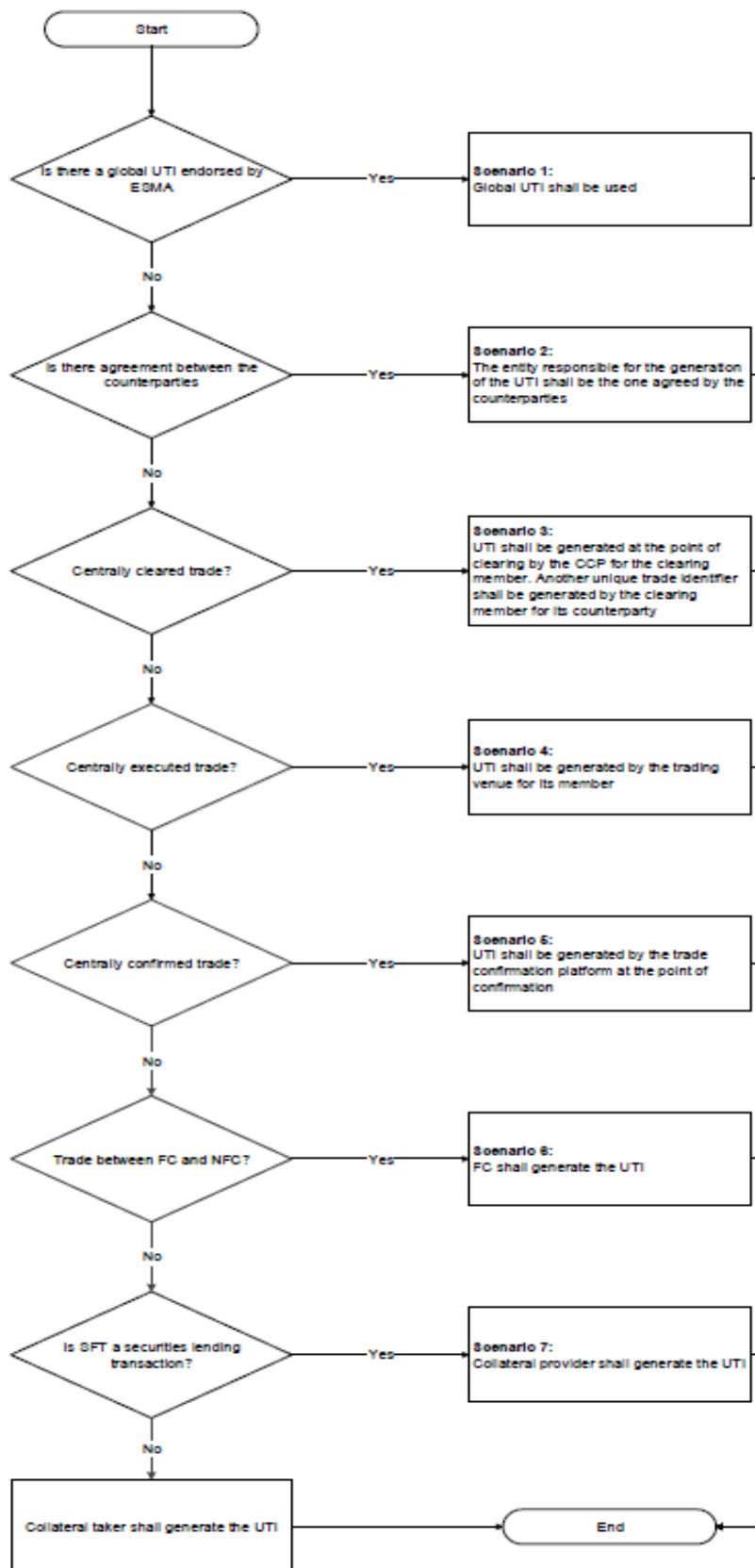
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<sup>20</sup> reference to be included when the guidance is published.

provisions regarding the timely sharing of the UTI (e.g. in a timely manner for the purpose of reporting and no later than in the confirmation process). Similarly, more specific rules were requested regarding the electronic transmission of the UTI ensuring its efficient handling. While ESMA understands the concerns and acknowledges the proposals, however given that the concrete proposals provided by some of the respondents were not specifically consulted and assessed, no further action is proposed at this stage.

246. Lastly, a few respondents proposed that if the relevant entity is unable to communicate the UTI within the reporting deadlines, the other counterparty should be allowed to generate its own UTI in order to report. ESMA disagrees with this proposal as it would result in significant matching issues as well as potentially in the duplicative reporting, in case the reports with the wrong UTIs are not cancelled. It should be noted that the draft standards include clear rules regarding the responsibility to generate and share the UTI in a timely manner.

**FIGURE 1 –UTI GENERATION FLOWCHART**



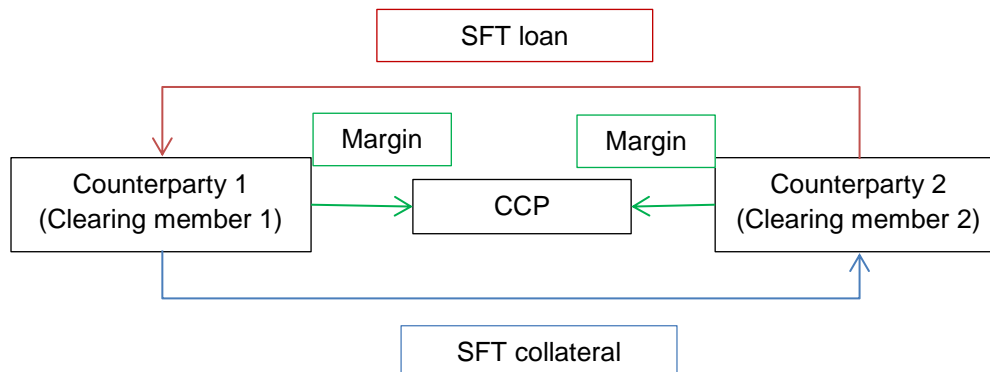
#### 4.3.6 Reporting of margins pertaining to SFTs

247. Based on the feedback received by to the proposals in the Discussion Paper with regards to collateral reporting, ESMA suggested in the CP that CCP margins should not be considered as part of the net exposure collateralisation, because they work in a different way.
248. The CCP interposes itself between the two counterparties that are clearing members. Therefore, the CCP has complete knowledge of the loan and the collateral of the SFT at all times.
249. In order to be able to use the services of a CCP, both Counterparty 1 and Counterparty 2 post margin to the CCP. The margin is composed of initial margin and variation margin<sup>21</sup>. The margin posted with the CCP has no direct relationship to the collateral of the SFT. It is used by the CCP to cover the risks arising from the transactions that it clears for the respective clearing member. The margin that the counterparties as clearing members post to the CCP may also cover risks arising from transactions other than SFTs, such as trades in derivatives. In order to enable the linking of the margins report with the reports of the cleared transactions covered by those margins, the counterparties should report the "Portfolio code" in all the reports in question. As clarified in the ITS, the portfolio code should be unique for the reporting counterparty.
250. A typical case of reporting of a CCP-cleared SFT is depicted below. Its inclusion in this section is to demonstrate the different types of collateral that flow between the parties, when an SFT is cleared. Different colours are used to show the actual transfers.

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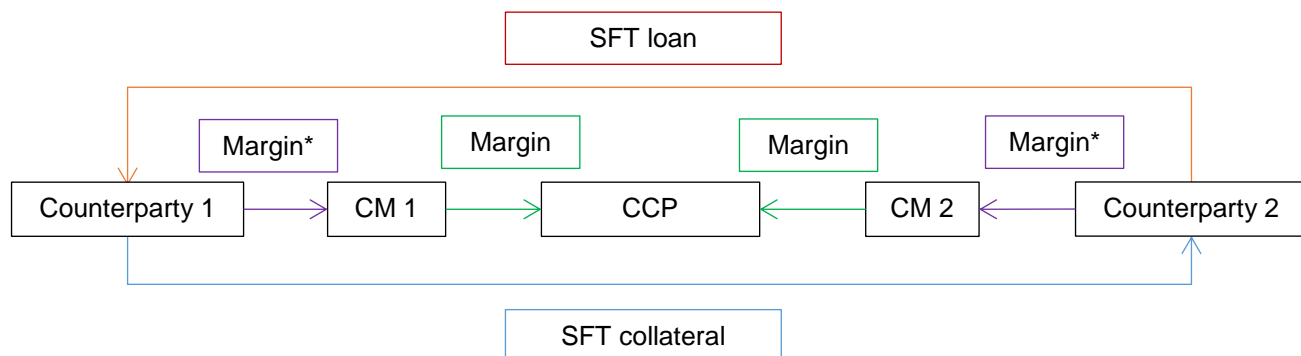
<sup>21</sup> There might be also excess margin, which would be the part of the collateral in excess of the required level.

Case 1. CCP interposing itself between the two counterparties that are clearing members



- Counterparty 1 reports a repurchase transaction cleared by a CCP. It reports that the trade is cleared in a dedicated reporting field and identifies itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP. Counterparty 1 also reports the SFT transaction details, consisting of the loan and the collateral. It also reports through a separate margin report the margin posted to the CCP.
- Counterparty 2 reports a repurchase transaction with CCP. It reports that the trade is cleared in a dedicated reporting field and identifies itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP. Counterparty 2 also reports the SFT transaction details, consisting of the loan and the collateral. It also reports through a separate margin report the margin posted to the CCP.
- The CCP reports a repurchase transaction with Counterparty 1 and a second repurchase transaction with Counterparty 2. It reports that the SFT is cleared in a dedicated reporting field and identifies itself by its LEI as the CCP in the further dedicated reporting field that specifies the CCP. The CCP also reports the SFT details, consisting of the loan and the collateral. It also reports through a separate margin report the margin received from the respective counterparty.
- In the case of a bilateral trade between Counterparty 1 and Counterparty 2 that the counterparties subsequently submit for clearing through a CCP, Counterparty 1 and Counterparty 2 also need to report the original bilateral trade. All transactions should be linked through a unique code, as described in section 4.3.4.

Case 2. CCP interposing itself between the two counterparties that are not clearing members



251. The CCP interposes itself between the two counterparties that are clearing members (CM 1 and CM 2). Therefore, the CCP has complete knowledge of the loan and the collateral of the SFT at all times.

252. In order to be able to use the services of a CCP, both CM 1 and CM 2 post margin to the CCP. The margin is composed of initial margin and variation margin<sup>22</sup>. The margin that clearing members post with the CCP has no direct relationship to the collateral of the SFT. The CCP uses the margin to cover all the risks arising from the transactions that it clears for the respective clearing members. The margin that the clearing members post to the CCP may also cover risks arising from transactions other than SFTs, such as trades in derivatives.

- CM 1 and CM 2 will require margin from their respective clients to cover the margin requirements for trades of their respective clients. Generally, a clearing member requires margin from its clients that is equal to or greater than the margin the clearing member deposits with the CCP.
- Counterparty 1 reports a repurchase transaction with CM 1. It reports that the trade is cleared in a dedicated reporting field and reports the LEI of its clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP of the clearing member. Counterparty 1 reports the SFT transaction details, consisting of the loan and the collateral. Counterparty 1 also reports through a separate margin report the margin that it posted to CM 1.

<sup>22</sup> There might be also excess margin, which would be the part of the collateral in excess of the required level.



- CM 1 reports a repurchase transaction with Counterparty 1. It reports that the trade is cleared in a dedicated reporting field and identifies itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP. CM 1 reports the details of the SFT, consisting of the loan and the collateral. CM 1 also reports through a separate margin report the margin that it received from Counterparty 1.
- CM 1 reports a repurchase transaction with the CCP. It reports that the trade is cleared in a dedicated reporting field and identifies itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP specifies the LEI of the CCP. CM 1 reports the SFT transaction details, consisting of the loan and the collateral. CM also reports the margin it posted to the CCP.
- The CCP reports a repurchase transaction with CM 1. It reports that the trade is cleared in a dedicated reporting field and it identifies itself by its LEI as the CCP in the dedicated reporting field that specifies the CCP. The field CCP is reported with the LEI of the CCP. The CCP reports the SFT details, consisting of the loan and the collateral. The CCP also reports in a separate margin report, the margin it received from CM 1.
- The trades involving Counterparty 2, Clearing Member 2 and CCP are reported as described above for Counterparty 1, Clearing Member 1 and the CCP, respectively.

253. In the case of a bilateral trade between Counterparty 1 and Counterparty 2 that the counterparties submit to clearing, Counterparty 1 and Counterparty 2 would need to also report the original bilateral trade. All transactions should be linked, as described in section 4.3.4.

254. The respondents confirmed the scenarios and agreed with the relevant aspects described. Furthermore, some respondents questioned the need for CCPs to report information as they are already supervised under EMIR. ESMA points out that under Article 3(3)(g) of SFTR CCPs are considered as financial counterparties to SFTs hence they need to report the relevant information pertaining to the trades that they conclude.

#### 4.3.7 Collateral reporting

255. Article 4(9)(b) SFTR specifies the requirement to report the assets used as collateral, including their type, quality, and value. Several respondents to the consultations

commented that ESMA should take into consideration the content of the standard repo master agreements that do not consider the securities subject to the purchase and repurchase as collateral. They further stated that deeming the securities as collateral may be correct in an economic view but not a legal one. ESMA is of the view that the securities subject to the purchase and repurchase in a repo are indeed collateral both from an economic and legal perspective, as provided in Article 2(1)(b) of the Directive 2002/47/EC on financial collateral arrangements<sup>23</sup>.

256. Under Article 4(1) SFTR, the details of the SFTs shall be reported no later than the working day following the conclusion, modification or termination of the SFT. As per recital 10 SFTR the substitution of the collateral should be reported only in its state at the end of the day. One respondent requested clarification if it is the intention to report on the full new collateral position or only the delta to the previous day. For the avoidance of doubt, whenever there is a modification to at least one of the data elements pertaining to the collateral, ESMA reiterates that the counterparties to the SFT will be required to report the full snapshot of collateral at its state at the end of the relevant day.

#### 4.3.7.1 Definition of Terms for the purposes of this Consultation Paper

257. Based on the responses to the Consultation Paper, ESMA has updated the definitions that it uses in the context of collateral reporting.
- a. The term “collateral pool” is understood as an arrangement whereby a legal entity or individual can deposit a range of securities in the custody of a central bank or a third-party custodian and available for delivery or pledge in order to collateralise any of a given set of current or future transactions for any number of counterparties.
  - b. The terms “collateral basket” and “collateral schedule” are synonyms and mean a list of criteria that a security must fulfil in order to be eligible for delivery against a given set of current or future transactions. The term “collateral basket” is primarily used in the repo market. The term “collateral schedule” is primarily used in securities lending.

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<sup>23</sup> ‘title transfer financial collateral arrangement’ means an arrangement, including **repurchase agreements**, under which a collateral provider transfers full ownership of financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations;

- c. The term “margin lending portfolio” means in the context of margin lending the set of client assets held by the prime broker and which is used to collateralise the margin loan and short market value.

#### 4.3.7.2 Trade-based collateral allocation and collateral allocation based on net exposure

258. ESMA distinguished in the CP between the reporting of collateral (securities, commodities or cash) at trade-level and the reporting of collateral based on the net exposure between the counterparties.

##### 4.3.7.2.1 Trade-based collateral allocation

259. In a trade-based collateral allocation and reporting, the collateral of the SFT is explicitly linked to a specific loan and both conform an SFT. A one-to-one relationship between the trade and the collateral exists when a single SFT is collateralised by a single security. A one-to-many relationship exists between the trade and the collateral when an SFT is collateralised through multiple assets. Respondents generally agreed with the cases that ESMA provided in the CP in which it is possible to report collateral at trade-level. Therefore, ESMA understands that the counterparties would report the collateral on trade level using the Universal Transaction Identifier (UTI) to provide the link between the loan data and the collateral data for

- a. repo trades in relation to the initial purchase;
- b. securities lending/borrowing trades that are collateralised individually, e.g. “cash rebate trades”;
- c. commodities lending/borrowing trades that are collateralised individually.

##### 4.3.7.2.2 Collateral allocation based on net exposure

260. Collateral allocation can also take place on the level of the net exposure between two counterparties, resulting in the collateralisation of one SFT through multiple assets (one-to-many relationship), multiple SFTs through one asset (many-to-one relationship), or multiple SFTs through multiple assets (many-to-many relationship). Counterparties would report the collateral separately from the underlying trades when reporting collateral for net exposures. Respondents generally agreed with the cases that the Consultation Paper provided in which collateral would be reported based on the net exposure.

Therefore, ESMA expects that the counterparties would report the collateral on a net exposure basis in the following cases:

- a. open repo trades, i.e. trades that have not reached their maturity date, that are not cleared through a CCP;
- b. open securities lending/borrowing trades, i.e. trades that have not reached their maturity date, that are not collateralised individually and not cleared through a CCP;
- c. open commodities lending/borrowing trades, i.e. trades that have not reached their maturity date, that are not collateralised individually and not cleared through a CCP;
- d. margin lending.

261. The calculation of net exposures is based on the type of legal agreement. The counterparties calculate separate net exposures for by type of SFT, e.g. repos and securities lending. The only exception to this would be when a master netting agreement exists between two counterparties that allows cross-product netting.

262. With the exception of margin lending, the reporting of the master agreement would provide the link between the loan data and the collateral data when reporting collateral on a net exposure basis. In the case of margin lending the actual type of the transaction would be the link between the loan and the collateral, as there is usually one margin lending transaction per pair of counterparties.

#### 4.3.7.3 Reporting of information on collateral

263. In response to the Consultation Paper, several respondents reiterated their comments from the Discussion Paper that the collateral information for SFTs is only available on value date plus one business day. In this context, ESMA stated in the Consultation Paper that when the counterparties do not know the trade-based collateral allocation by the reporting deadline, the counterparties would need to report exact allocation of collateral as soon as it is known but no later than on the next business day after value date of the opening leg of the SFT. ESMA also agrees that when collateralisation takes place based on the net exposure basis the collateral would be reported at the latest on the next business day after value date.

**Table 5 - Summary table regarding the availability of information based on the type of SFTs and collateral**

Trade type	Relationship between trade details and collateral	Availability of information on collateral allocation
Repo trade <sup>24</sup> not involving collateral basket	<ul style="list-style-type: none"> <li>One-to-one</li> <li>One-to-many<sup>25</sup></li> </ul>	<ul style="list-style-type: none"> <li>Known at end of trade date for bilateral trade without tri-party collateral management</li> <li>Specific collateral allocation on ISIN level known at the latest at the end of value date (intended settlement date of opening leg) + one business day for bilateral trade with tri-party collateral management</li> </ul>
Repo trade involving collateral basket	<ul style="list-style-type: none"> <li>One-to-one<sup>26</sup></li> <li>One-to-many</li> </ul>	<ul style="list-style-type: none"> <li>Collateral pool or collateral basket known at the end of trade date</li> <li>Specific collateral allocation on ISIN level known at the latest at end of value date (intended settlement date of opening leg) + one business day</li> </ul>
Securities lending not involving collateral basket)	<ul style="list-style-type: none"> <li>One-to-one</li> <li>One-to-many</li> <li>Many-to-one</li> <li>Many-to-many</li> </ul>	<ul style="list-style-type: none"> <li>Specific collateral allocation on ISIN level or cash collateral known at the latest at the end of value date (intended settlement date of opening leg) + one business day</li> </ul>
Securities lending involving collateral basket	<ul style="list-style-type: none"> <li>One-to-one</li> <li>One-to-many</li> <li>Many-to-one</li> <li>Many-to-many</li> </ul>	<ul style="list-style-type: none"> <li>Collateral pool or collateral basket known at the end of trade date</li> <li>Specific collateral allocation on ISIN level known at the latest at the end of value date (intended settlement date of opening leg) + one business day</li> </ul>

<sup>24</sup> This scenario also covers buy/sell-backs based on ESMA's understanding.

<sup>25</sup> In this case, one-to-many relationship exists where a single SFT is collateralised by multiple securities (specific ISINs) agreed at the time of the trade.

<sup>26</sup> This is a possible but in ESMA's view unlikely scenario where only one ISIN is selected as collateral from all securities meeting the criteria of the basket to collateralise an SFT.

**Table 5 - Summary table regarding the availability of information based on the type of SFTs and collateral**

Trade type	Relationship between trade details and collateral	Availability of information on collateral allocation
Net exposure for repo trades	<ul style="list-style-type: none"> <li>• One-to-one<sup>27</sup></li> <li>• One-to-many<sup>28</sup></li> <li>• Many-to-one</li> <li>• Many-to-many</li> </ul>	<ul style="list-style-type: none"> <li>• Known at the latest at end of value date + one business day</li> </ul>
Margin lending	<ul style="list-style-type: none"> <li>• One-to-many</li> </ul>	<ul style="list-style-type: none"> <li>• Known at the end of trade date</li> </ul>

#### 4.3.7.4 Definition of collateral reporting elements

264. ESMA proposed in the CP that the collateral reporting for SFTs would consist of different optional reporting elements based on the type and characteristics of the trade as well as the type of collateral. These elements would be used to report the original SFT and subsequent changes to the composition of the collateral underlying one or more SFTs. The respondents to the Consultation Paper had no objections to the proposed types of collateral reporting elements.

**Table 6 - Collateral Reporting Elements**

SFT Collateral Reporting Elements
Cash Collateral Element
Securities Collateral Element
Commodities Collateral Element
Value date of collateral

<sup>27</sup> This situation may arise where there is a netting arrangement but at the end of the day there is only one SFT entered into between the two counterparties. It is collateralised by a single ISIN.

<sup>28</sup> This situation may arise where there is a netting arrangement but at the end of the day there is only one SFT entered into between the two counterparties. It is collateralised by multiple ISINs agreed at the time of the trade.

#### 4.3.7.4.1 Cash Collateral Element

265. The cash collateral element would include the attributes that require reporting for cash collateral, i.e. the currency and amount of funds provided as collateral. The Consultation Paper asked a question on which scenarios would require at the end of day the reporting of cash not only as principal amount, but also as cash collateral for repos. The responses to this question confirmed that a counterparty can provide cash as collateral on a temporary or overnight basis to cover a shortfall of eligible collateral securities. A further respondent stated that cash collateral reporting for repos would also take place for the reporting of variation margin in a bilateral, non-CCP cleared repo scenario. Therefore, ESMA will also foresee the possibility to report cash as collateral for repos.

266. SFTs may be collateralised in several currencies. Therefore, the reporting would foresee a repetitive element for the reporting of cash collateral.

Table 7 - Cash Collateral Element	
Cash Collateral Element	
	Collateral Currency
	Collateral Amount

#### 4.3.7.4.2 Securities Collateral Element

267. When securities collateralise an SFT, the counterparties would always have to report the information in the Securities Collateral Element, which would specify the attributes that require reporting for securities provided as collateral.

268. Some respondents reiterated their feedback to the Discussion Paper that the requested information is too extensive. In this context, ESMA would again highlight that Article 4 (9)(b) of the SFT Regulation requires the reporting of the assets, their type, quality and value, which covers the reporting fields that ESMA has proposed for collateral.

269. Respondents confirmed that haircuts are allocated on the level of the security or indirectly through the asset class of the security. Therefore, ESMA intends to require the reporting of the haircut on the level of the security.

Table 8 - Securities Collateral Element	
Securities Collateral Element	

**Table 8 - Securities Collateral Element**

ISIN
Currency or Unit of Quotation
Quantity or Nominal Amount
Price Currency
Price Per Unit
Collateral Market Value
Collateral Quality
Haircut or Margin
Issuer LEI
Jurisdiction of Issuer
Maturity Date
Availability of Collateral Re-use

270. The Securities Collateral Element would be repetitive (i.e. the counterparties will have to provide information on all securities used to collateralise an SFT), for instance when a basket of securities is used to collateralize an SFT.

#### 4.3.7.4.3 Commodities Collateral Element

271. When commodities collateralise an SFT, the counterparties will always have to report the information in the Commodities Collateral Element, which would specify the attributes that require reporting for commodities provided as collateral.

**Table 9 - Commodities Collateral element**

Commodities Collateral Element
Base product
Sub-product
Further sub-product
Currency or Unit of Quotation
Quantity



**Table 9 - Commodities Collateral element**

Price Currency
Price Per Unit
Collateral Market Value
Collateral Quality
Haircut or Margin
Availability of Collateral Re-use

272. The Commodities Collateral Element would be repetitive (i.e. the counterparties will have to provide information on all commodities used to collateralise an SFT), e.g. when a basket of commodities is used to collateralize an SFT.

#### 4.3.7.5 Value date of collateral

273. When assessing the feedback to the Consultation Paper, ESMA learnt that there are situations where the counterparties agree to exchange collateral in advance of the start of the SFT, i.e. the collateral is delivered before the loan is released for settlement. ESMA understands the provided example applies to the case of reporting collateral based on a net outstanding amount, i.e. collateral is not explicitly attributable to a single trade. This leads to a situation in which the authorities could be misled in their analysis of exposures between counterparties, either because of apparent over-collateralization or because of hidden under-collateralisation.

274. To address this issue, ESMA decided to include an additional field applicable to all the collateral elements that would be providing information on the furthest date of loan (in the case of any of the SFTs) agreed between the counterparties to which the collateral refers. This element will be called “Value date of the collateral”.

275. The actual settlement date of the collateral would be reported in the field Event date.

#### 4.3.7.6 Reporting and linking of trade and collateral data

276. In the Consultation Paper ESMA stated that the reporting of collateral for SFTs must allow:

- a. the reporting of collateral on trade level in the original trade report for the case when collateral is directly allocated to a specific SFT and the collateral is known by the reporting deadline;
  - b. the reporting of collateral on trade level as an update to the original trade report for the case when collateral is directly allocated to a specific SFT, but not known by the reporting deadline;
  - c. the reporting of collateral based on net exposure for the case when collateral is not directly allocated to a trade but is provided for the SFTs between two counterparties.
277. Many respondents highlighted the fact the collateral may not be known until one working day until after the value date for cross-border trades owing to different time zones and in the case of tri-party administered trades. Therefore, ESMA has amended the deadline for collateral. In those situations, detailed in Figure 2, where the collateral is not reported by the reporting deadline, the counterparties should report it at the earliest opportunity, but no later than one working day following the value date of the SFT. In that case, they are not deemed to have completed their reporting obligation under Article 4 SFTR until they provide the relevant information on collateral.
278. One respondent highlighted that some entities may not yet have LEIs. Therefore, it would not be possible to report based on the proposed logic. ESMA would like to highlight that Article 4(10) of SFTR mandates the use of LEIs. Consequently, the counterparties to an SFT must have an LEI.
279. One respondent requested how the linking algorithm would apply to the reporting of tri-party trades. The respondent stated that SFT could be far more efficiently collected directly from tri-party agents, as they have direct access to the information. In this context, ESMA would like to highlight that the counterparties to the SFT have the reporting obligation. However, counterparties could outsource their reporting to the tri-party agent in the case that their tri-party agent offers such a service. In the case of outsourcing, it is still the responsibility of the reporting counterparties to provide those entities with the relevant information to ensure compliance with SFTR.
280. ESMA proposed linking collateral to the trade for collateralisation based on net exposure basis by using the master agreement as a linking element. One respondent stated that the version of the master agreement should not be included as a link criterion. When master agreements include clearing conditions, then these agreements may change

several times within a year. Mismatches in versions could occur frequently in such cases. ESMA confirms that the linking of trade and collateral based on master agreement would not include the master agreement version.

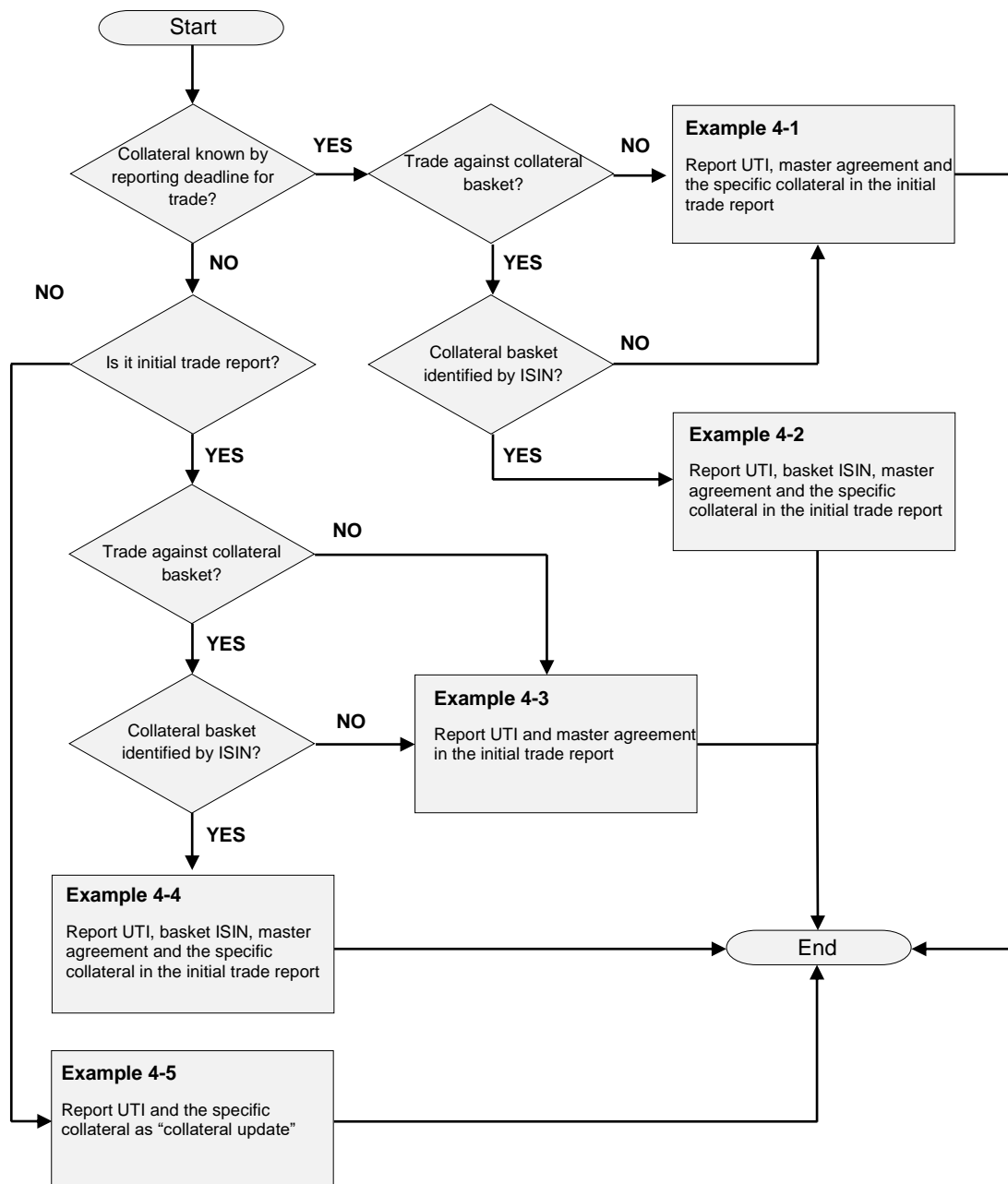
281. As mentioned before, several respondents stated that in some cases the proposed linking of collateral to the trade data may lead to misleading reports. The feedback provided the example of prepaid collateral where the collateral is delivered before the loan is released for settlement. To minimise the appearance of over-collateralisation or under-collateralisation, ESMA has enhanced its algorithm for linking collateral to the trades, as documented in Section 4.3.7.2.2.

#### 4.3.7.6.1 Trade-based collateral reporting

282. In the trade-based collateral reporting, collateral can be reported in the original trade report or as a subsequent update with action type “Collateral update” to the original trade report. The subsequent flowchart illustrates the algorithm for reporting collateral for the case when collateral is directly allocated to a specific SFT. The fields included in Figure 2 are those that are used to identify and link the collateral, though this is not the exhaustive list of fields to be reported in each and every case. For explanation on mandatory fields refer to section 4.2.2.1 on Action types.

**FIGURE 2 –ALGORITHM FOR LINKING BETWEEN LOAN AND COLLATERAL DATA**

Trade-based collateral allocation<sup>29</sup>



283. When collateral is allocated on trade level and the collateral allocation is known by the end of trade date and the trade does not involve a collateral basket that is identified by

<sup>29</sup> The data elements referred in the figure relate only to the details of the SFT information needed to relate collateral to loan data. The data elements applicable to a given SFT will be included as part of the technical standards on reporting and of the further technical specifications of the ISO 20022 xml messages.

an ISIN, then the collateral would be reported in the initial trade report (see Example 4-1). The initial link between the trade and the collateral is given through the single report. For example, this would be the case for a bilateral repo trade when the counterparties to the trade know the collateral allocation at the end of the trade date.

**EXAMPLE 4-1 – EXAMPLE OF TRADE-BASED COLLATERAL REPORTING BY REPORTING DEADLINE**

Table 10 - Trade-based collateral reporting by reporting deadline	
Reporting Counterparty: LEI1	
Other Counterparty: LEI2	
UTI: 45678	
Master agreement: GMRA	
Securities collateral element: ISIN 1	
Action Type: New	

284. When collateral is allocated on trade level and the collateral allocation is known by the end of trade date and the trade involves a collateral basket that is identified by an ISIN, then both the ISIN of the collateral basket and the collateral would be reported with the trade (see Example 4-2). The initial link between the trade and the collateral is given through the single report. For example, this could be the case for a tri-party repo trade when the counterparties to the trade know the collateral allocation at the end of the trade date.

**EXAMPLE 4-2 – EXAMPLE OF TRADE-BASED COLLATERAL REPORTING BY REPORTING DEADLINE INVOLVING COLLATERAL BASKET IDENTIFIED BY ISIN**

Table 11- Trade-based collateral reporting by reporting deadline involving collateral basket identified by ISIN	
Reporting Counterparty: LEI1	
Other Counterparty: LEI2	
UTI: 45678	
Master agreement: GMRA	
Collateral Basket Identifier: ISIN A	
Securities collateral element: ISIN 1	

**Table 11- Trade-based collateral reporting by reporting deadline involving collateral basket identified by ISIN**

Action Type: New

285. When collateral is allocated on trade level and the collateral allocation is not known by the end of trade date and the trade does not involve a collateral basket that is identified by an ISIN, then the trade would be reported without the collateral (see Example 4-3). However, the trade report would include the UTI as the identifier to link the trade to the subsequent collateral report as well as the master agreement to link the trade to the subsequent reporting of collateral for a net exposure.

**EXAMPLE 4-3 – EXAMPLE OF TRADE-BASED REPORTING WHEN THE COLLATERAL ALLOCATIONS IS NOT KNOWN BY REPORTING DEADLINE AND TRADE DOES NOT INVOLVE COLLATERAL BASKET IDENTIFIED BY ISIN**

**Table 12 - Trade-based reporting when the collateral allocations is not known by reporting deadline and trade does not involve collateral basket identified by ISIN**

Reporting Counterparty: LEI1

Other Counterparty: LEI2

UTI: 45678

Master agreement: GMRA

Action Type: New

286. When collateral is allocated on trade level and the collateral allocation is not known by the end of trade date and the trade involves a collateral basket that is identified by an ISIN, then the trade would be reported without the collateral (see Example 4-4). However, the trade report would include the UTI as the identifier to link the trade to the subsequent collateral report, the master agreement to link the trade to the reporting of collateral for a net exposure and the ISIN of the collateral basket to identify the type of collateral.

**EXAMPLE 4-4 – EXAMPLE OF TRADE-BASED COLLATERAL REPORTING WHEN THE COLLATERAL ALLOCATION IS NOT KNOWN BY REPORTING DEADLINE AND TRADE INVOLVES COLLATERAL BASKET IDENTIFIED BY ISIN**

Table 13 - Trade-based collateral reporting when the collateral allocation is not known by reporting deadline and trade involves collateral basket identified by ISIN	
Reporting Counterparty: LEI1	
Other Counterparty: LEI2	
UTI: 45678	
Master agreement: GMRA	
Collateral Basket Identifier: ISIN A	
Action Type: New	

287. When the counterparties do not know the trade-based collateral allocation by the reporting deadline, the counterparties would need to report exact allocation of collateral as soon as it is known but no later than on the next business day after value date of the opening leg of the SFT. When collateral is allocated on trade level, then the collateral update for the trade would include the explicit collateral allocation (see Example 4-5). The collateral update would include the UTI as the identifier to link the trade to the original trade report.

**EXAMPLE 4-5 – EXAMPLE OF COLLATERAL UPDATE AND TRADE REPORT LINKING WHEN THE COLLATERAL ALLOCATION IS NOT KNOWN BY REPORTING DEADLINE AND TRADE DOES NOT INVOLVE COLLATERAL BASKET IDENTIFIED BY ISIN**

Table 14- Reporting of collateral and linking to initial report in the case of trade-based collateral reporting when the collateral allocation is not known by reporting deadline and trade does not involve collateral basket identified by ISIN	
Reporting Counterparty: LEI1	
Other Counterparty: LEI2	
<b>UTI: 45678</b>	
Master agreement: GMRA	
Action Type: New	
Reporting Counterparty: LEI1	
Other Counterparty: LEI2	
<b>UTI: 45678</b>	
Master agreement: GMRA	
Securities collateral element: ISIN 1	
Action Type: Collateral update	

**4.3.7.6.2 Collateral reporting based on net exposures**

288. In the Consultation Paper, ESMA proposed to link trades with collateral for SFTs using the LEIs of the counterparties and the type of master agreement for the cases in which collateral is not explicitly attributable to a single trade. The reporting of the trade report and the collateral report would include the master agreement in order to link the relevant trades to the collateral. A code list would define the valid values for the master agreement.

289. When collateralisation for an SFT takes place based on a net exposure basis, the initial trade report will not include the allocation of collateral. However, the trade report must include the necessary attributes to link the trade to the subsequent reporting of collateral for the net exposure that includes the trade. The calculation of net exposures is based on the type of legal agreement, i.e. counterparties calculate separate net exposures for repos, securities lending and margin lending. The only exception to this would be in the

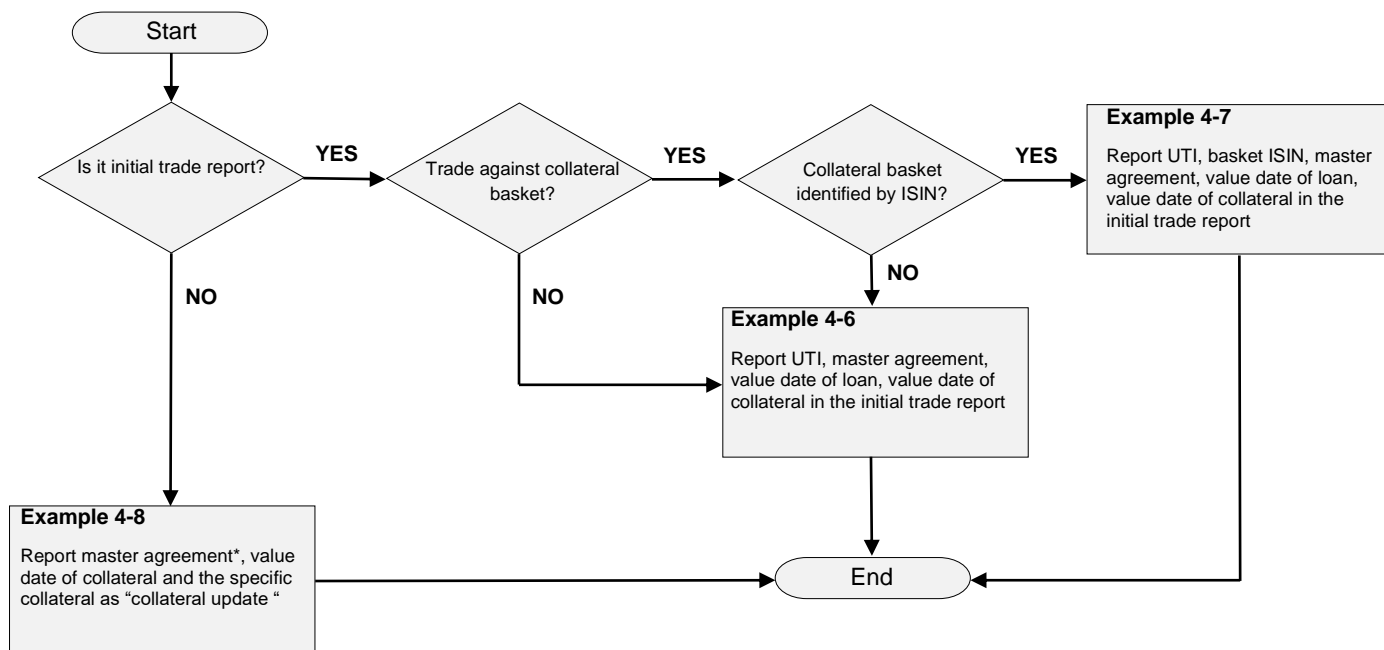


rare case when a master netting agreement exists between two counterparties that provides for cross-product netting. Therefore, the link between the collateral reported for a net exposure to the underlying trades would be the LEIs of the counterparties to the SFT, the master agreement and the value date of loan to which the collateral refers (field Value date of collateral).

290. The subsequent flowchart illustrates the algorithm for reporting collateral for the case when collateralisation takes place based on net exposures. This case does not refer to the reporting of CCP margin which is discussed under Section 4.3.6.

**FIGURE 3 –ALGORITHM FOR COLLATERAL REPORTING BASED ON NET EXPOSURES**

Reporting for collateralisation based on net exposures<sup>30</sup>



291. Several respondents requested clarification on whether, when reporting collateral based on net exposure, this linking would apply when only one SFT exists between two parties. ESMA highlights that the logic illustrated for reporting collateral on net exposures would be applicable regardless of whether one or many trades are included in the calculation of the net exposure.

292. When reporting the initial trade that is collateralised on a net exposure basis and does not involve a collateral basket that is identified by an ISIN, the original trade report would

<sup>30</sup> The data elements referred in the figure relate only to the details of the SFT information needed to relate collateral to loan data. The data elements applicable to a given SFT will be included as part of the technical standards on reporting and of the further technical specifications of the ISO 20022 xml messages.

specify the master agreement, the value date of the loan, but require no further information on the collateral (see Example 4-6).

**EXAMPLE 4-6 – EXAMPLE OF INITIAL TRADE REPORT WITH COLLATERALISATION ON NET EXPOSURE BASIS AND NOT INVOLVING COLLATERAL BASKET IDENTIFIED BY ISIN**

Table 15 - Initial trade report with collateralisation on net exposure basis and not involving collateral basket identified by ISIN	
Reporting Counterparty: LEI1	
Other Counterparty: LEI2	
UTI: 45678	
Master agreement: GMRA	
Value Date: 31/1/17	
Action Type: New	

293. When reporting the initial trade that is collateralised based on a net exposure basis and involves a collateral basket that is identified by an ISIN, the original trade report would specify the master agreement, the value date and the ISIN of the collateral basket (see Example 4-7).

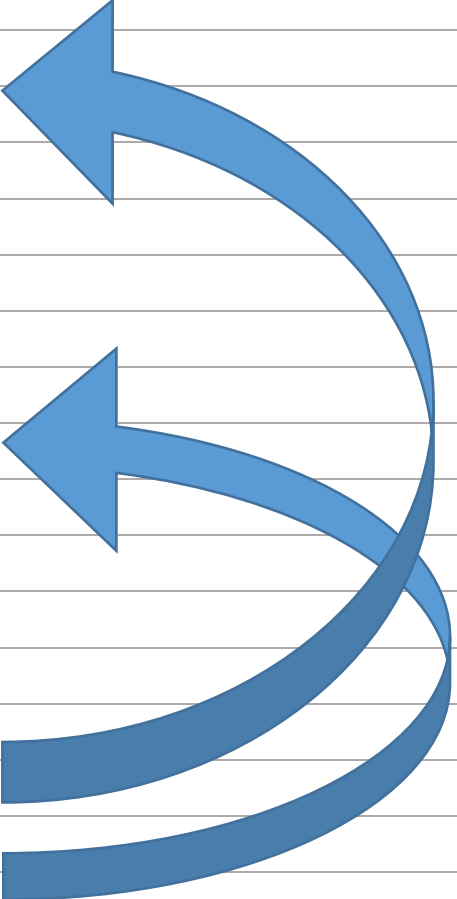
**EXAMPLE 4-7 – EXAMPLE OF INITIAL TRADE REPORT WITH COLLATERALISATION ON NET EXPOSURE BASIS AND INVOLVING COLLATERAL BASKET IDENTIFIED BY ISIN**

Table 16- Initial trade report with collateralisation on net exposure basis and involving collateral basket identified by ISIN	
Reporting Counterparty: LEI1	
Other Counterparty: LEI2	
UTI: 45678	
Master agreement: GMRA	
Collateral Basket Identifier: ISIN A	
Value date: 31/1/17	
Action Type: New	

**EXAMPLE 4-8 – EXAMPLE OF INITIAL TRADE REPORT WITH COLLATERALISATION ON NET EXPOSURE BASIS AND INVOLVING COLLATERAL BASKET NOT IDENTIFIED BY ISIN**

**Table 17 - Reporting of collateral and linking to initial report in the case of trade-based collateral reporting when the collateral allocation is not known by reporting deadline and trade does not involve collateral basket identified by ISIN**

<b>Reporting Counterparty: LEI1</b>
<b>Other Counterparty:LEI2</b>
<b>Master agreement: MSLA</b>
<b>Value date: 31/1/17</b>
UTI: 45678
Action Type: New
<b>Reporting Counterparty: LEI1</b>
<b>Other Counterparty:LEI2</b>
<b>Master agreement: MSLA</b>
<b>Value date:30/1/17</b>
UTI: 12345
Action Type: New
<b>Reporting Counterparty: LEI1</b>
<b>Other Counterparty:LEI2</b>
<b>Master agreement: MSLA</b>
<b>Value date of collateral:31/1/17</b>
Event date: 30/1/17
Securities collateral element: ISIN 1, ISIN2, ISIN 3, ISIN 4, ....ISIN 100
Action Type: Collateral update



294. When reporting the explicit collateral allocation for a net exposure, the collateral update would specify the LEIs of the counterparties, master agreement, value date of the collateral and the specific collateral allocation so that the collateral update can be linked to the already reported SFTs (see Example 4-8). The event date specifies the actual settlement of the collateral. Identifying to which trades the collateral update for a net

outstanding amount applies would take place by comparing LEIs of the counterparties, master agreement and the date fields of the original trade report and provided in the collateral update. The collateral should be reported based on actual settlement that occurred on 30/1/17 that is specified as the “Event Date”. The “Value date of collateral” specifies the date as of which the collateral update applies to the outstanding loans. This could be for example 31/1/17 in the case of pre-paid collateral. Therefore, to determine to which trades the collateral update applies, the Value date of collateral would be compared to the value date and the maturity date of the trades that have the same LEIs of the counterparties and the same master agreement.

295. A further respondent highlighted that linking collateral based on bespoke agreements would be difficult as there would be a need for the counterparties to ensure a common identification in the free-text field. ESMA agrees with this assessment. Therefore, ESMA proposed in the Consultation Paper to include in the standardised list of master agreements a code value for “Bilateral Agreement” (also used in the context of margin lending) to ensure a common identification without using the content of the free text field for linking.
296. When the code list for the master agreement does not specify a valid code for the master agreement used in a transaction, then reporting counterparties would need to specify the respective Bilateral agreement or the Other agreement code. This would be the case when there is a delay between updating the code list and the use of a new type of master agreement. The code list for the master agreement would contain a generic code for bespoke master agreements based on type of SFT between two counterparties and for bespoke cross-product netting agreements and an additional field to describe it. This way by using only the former the linking would be ensured.

#### 4.3.7.7 Special case of commodities collateral and the use of ISIN

297. Article 4(10) (b) SFTR specifies that the draft technical standards specify the format of reporting with format including the international securities identification number (ISIN). Any specific aspects of SFTs involving commodities that are not described in the previous section are included in section 4.2.4.3.

#### 4.3.7.8 Special case of margin lending

298. Similar to repos, margin loans are a form of secured lending where the lender (i.e. the collateral taker) extends credit to a borrowing counterparty against collateral. A key

difference is that margin loans are collateralised using an existing portfolio of assets (possibly including cash) held by the lender.

299. As in the scenario description (see section 4.2.4.4), the margin lending reporting obligation applies exclusively to prime brokerage margin lending, whereby a financial entity (usually an investment fund) borrows money from a prime broker (described in paragraph 257) as part of a prime brokerage agreement, with some or all of the assets and collateral received from other transactions held by the prime broker used as collateral to secure the margin loan and the short market value.
300. The exposure of a prime broker from a margin loan is collateralised with the securities in the margin lending portfolio that the prime broker manages. The prime broker does not allocate specific collateral securities from the margin lending portfolio based on the amount of the net exposure. Therefore, when the prime broker extends a margin loan to its client, or when the client's short market value is positive, the prime broker and the borrower would need to report the full composition of the collateral portfolio regardless of the amount of exposure resulting from the loan(s). Table 18 contains the additional fields that are considered in the case of margin lending.

**Table 18 - Margin Lending Collateral Element**

Margin lending collateral element	
	Currency
	Amount

301. Although ESMA was made aware of the costs associated with this, considering Level 1 requirements and in order to seek alignment with other types of SFTs, collateral reporting should take place at ISIN level.

#### 4.3.8 Distinguishable assets

302. The securities in the collateral pools, baskets or portfolios are distinguishable through their ISIN, but a more precise distinction is not possible as securities are fungible instruments by their nature. However, re-use information at ISIN level is useful to assess the asset encumbrance risk, the contribution of re-use to the build-up of leverage in the

financial system and the extent to which re-use increases the interconnectedness of market participants.

303. In those cases, where the assets are distinguishable, the entity should report the actual amount of reuse per each reused ISIN. The reporting of the relevant values is defined in the following section 4.3.9.

#### 4.3.9 Collateral Reuse

304. SFTR regulation defines reuse as “the use by a receiving counterparty, in its own name and on its own account or on the account of another counterparty, including any natural person, of financial instruments received under a collateral arrangement, such use comprising transfer of title or exercise of a right of use in accordance with Article 5 of Directive 2002/47/EC but not including the liquidation of a financial instrument in the event of default of the providing counterparty”. The term counterparty is to be interpreted as defined under section 4.2.
305. Following a question raised by one respondent during the consultation process, regarding reuse “on the account of another counterparty”, ESMA believes that this is part of the definition which is intended to identify situations where collateral is used on behalf of another counterparty.
306. SFT reporting including re-use information can be delegated to a third party as per Article (7) SFTR.
307. This means that if the received collateral is eligible for re-use, it can be used for example in an outright sale or as collateral for another transaction (e.g. repos, securities borrowing or derivatives). SFTR foresees the need to report collateral re-use in cases where the collateral is distinguishable from other assets and it essential from an analytical perspective that this can be linked to the SFTs. One respondent indicated that it is indeed possible when underlying assets have been pledged, rather than had their title transferred. No other clear examples were provided. The broad majority of the responses explained that re-use cannot be defined at transaction level.
308. Indeed, collateral is usually managed on a portfolio basis rather than at transaction-level, resulting in pooling the available assets and often without tracking their source. What is more important from a reporting perspective is that this information is not part of the common data of the collateral, but it is rather specific to the counterparty which is re-using collateral.

309. Therefore, the reuse data should be reported in a separate template linked to the respective legal entity. The further linking of reuse to individual SFTs could be made by authorities by making use of the ISINs of the reused securities.
310. The reporting of reuse was considered complex and potentially difficult to implement, thereby clear guidance was requested and shall be provided about how it should be implemented.
311. The answers received during the consultation suggest that market participants broadly share the view that, considering the fungible nature of securities and the collateral management practice at pool level, reused securities cannot be linked to specific SFTs. Collateral reuse can only be calculated at entity and ISIN level. Furthermore, it was mentioned that only the collateral taker should report on reuse as confidentiality issues were raised about providing this information to the collateral provider.
312. In specific cases collateral reuse does not currently take place, based on the type of counterparties involved. For example, from an agent lender perspective, when collateral is held in a contractually agreed omnibus securities account for the benefit of the relevant lending clients and the client, the agent lender will merely hold the collateral on the client's behalf.
313. Arguments were brought forward to exclude CCPs from reporting reuse or to always report the reuse of SFT collateral, as CCPs immediately transfer the SFT collateral and thereby any resulting exposure from one counterparty to another so that no net exposure remains. Considering the fact that in the clearing process, CCPs are transmitting the overall collateral from one counterparty to the other and are not keeping any outstanding position, CCPs are only required to report reuse for non-cleared transactions e.g. treasury transactions, as well as the reuse of collateral securities received as part of CCP margins. Furthermore, as provided in Article 3(12) of SFTR, rights resulting from the CCP failing to pay amounts owed in connection with its use of a securities settlement system's (SSS) credit support line are not in the scope of the SFTR reporting.
314. The respondents to the consultations also suggested the collection of reuse data in a separate periodical reporting process, rather than the daily transaction reporting framework. However, to ensure the achievement of the objectives of SFTR, ESMA is of the view that the reporting of collateral reuse should take place on a daily basis, which would be the same frequency as the reporting of collateral data (see paragraph 324). The amount of collateral reused is indeed expected to vary with the quantity, value and other characteristics of the collateral used in SFTs. Reuse would be reported by each

entity that has entered into an SFT, as per the formula included in paragraph 319. The data on reuse however would not be used for reconciliation since it is individual data for each entity.

315. With regards to transactions in which cash is used as collateral for securities lending, and in line with the FSB reporting elements, counterparties shall report data about the cash collateral re-investment. This information will be useful to assess the rebate rate of a given transaction and possible risk associated with reinvestment practices, while fulfilling the FSB reporting requirements.
316. As for the FSB global SFT data collection standards, ESMA will continue to follow all the relevant developments at FSB level with regards to re-use of cash and non-cash collateral.

#### Data elements on collateral reuse

317. This section discusses the information on collateral re-use and cash collateral reinvestment. The information for other elements in the reuse table, i.e. on availability for re-use (which stems from the type of collateral arrangement) and on margin lending funding sources, is discussed in the subsequent sections.

Table 19 - Reused Collateral	
Reused Collateral	
Type of collateral component	
Collateral component	
Value of re-used collateral	
Estimated reuse of collateral	
Reinvestment Rate	
Re-invested cash	
Re-invested cash amount	
Re-invested cash currency	

318. Cash collateral reinvestment will be reported also in the table where data on reuse is included. It will be provided separately.
319. Following the feedback received from the market participants and with the aim to align the re-use measure as much as possible to the work undertaken by FSB on collateral



velocity, the following formula should be used by the reporting counterparties for calculating the estimated re-use of collateral. The scope of collateral re-use being measured is restricted to collateral posted or received, including securities lent and borrowed through securities lending arrangements, and subsequently re-used in SFTs by individual entities and it will be reported per each ISIN. The measure of collateral reuse for a given collateral type  $j$ ,<sup>31</sup> collateral re-used by reporting entity  $i$  should be calculated as follows:

$$collateral_{ij}^{reused} = \left( \frac{collateral_{ij}^{received, eligible\_for\_reuse}}{collateral_{ij}^{received, eligible\_for\_reuse} + assets_{ij}^{own}} \right) \times (collateral_{ij}^{posted})$$

320. In the above formula  $collateral_{ij}^{received, eligible\_for\_reuse}$  represents the market value of collateral of type  $j$  received by entity  $i$  that is eligible for re-use,  $assets_{ij}^{own}$  represents assets of the same type  $j$  owned by entity  $i$ , and  $collateral_{ij}^{posted}$  stands for posted collateral by entity  $i$ , again of type  $j$ . This approximate measure implicitly assumes that the probability of a security being posted as collateral is independent of whether the collateral comes from an entity's own assets or from another collateralised transaction.
321. As per FSB definition, collateral posted and received should include any type of collateral used in transactions within the SFTR scope (i.e. SFTs), irrespective of their legal structure. Securities borrowed and lent through securities lending transactions should also be included. Collateral posted and received for SFT margining purposes, or for margin requirements on a portfolio of transactions that comprises SFTs, are to be included. Furthermore intra-group transactions between different legal entities (banks or other subsidiaries) or between foreign branches and their parent company should be included, according to the "locational" approach. In line with that approach, no intra-group netting of such transactions should take place for the computation of the collateral re-use measure and metrics.
322. Information on the defined/estimated amount of collateral reused should be updated every time the figure changes. This information will be specific to each counterparty.

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<sup>31</sup> The list of the eight collateral types considered is provided in Table 4, data element 4.9, of the global securities financing data standards

323. Based on the consultation feedback, ESMA is aware of additional costs associated with the daily reporting of collateral re-use. On the opposite side of the balance, the following aspects need to be considered:
- a. The required initial system development costs should not vary significantly with the frequency of the reporting;
  - b. The frequency of collateral re-use reporting is directly linked to the daily mark-to-market valuations, timely dissemination of these valuations and the support for queries on valuations, which are already required for SFTR reporting (even leaving re-use aside), and which covers an equally high number of ISINs.
  - c. The reporting would not require updating the figure with every single trade concluded but constitutes an end-of-day snapshot.
324. To facilitate the analysis of re-use and address the potential data quality issues that might arise from pre-settlement reporting, the daily reuse reporting shall be based on settlement date +1 day (S+1).
325. Against this background aligning the re-use reporting to the other SFT reporting elements follows the overall SFTR logic of daily reporting and presents the advantage of being able to follow more closely re-use movements and trends. Given the role that collateral re-use may play in procyclicality and leverage, higher frequency will also help EU and national authorities to gain a better understanding of re-use dynamics and in the context of specific market events or policy interventions.
326. Concerning the reinvestment of cash collateral, the FSB<sup>32</sup> and ESRB<sup>33</sup> identified that one of the potential issues associated with the reinvestment of cash collateral was liquidity risk. Liquidity risk may stem from a maturity mismatch between the securities loan and the cash collateral reinvestment, or the liquidity of instruments in which cash collateral is reinvested. In particular, the FSB policy framework suggests relying on the weighted average maturity (WAM) and/or weighted average life of a portfolio in which cash collateral invested, and the ESRB study found that a large share of cash collateral is reinvested by agent lenders with a fixed (albeit short) term compared with a large share of open-term securities loans. In order to monitor the potential financial stability risks

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<sup>32</sup> FSB (2013), Policy framework for addressing shadow banking risks in securities lending and repos.

<sup>33</sup> ESRB (2014), Securities financing transactions and the (re)use of collateral in Europe.

associated with cash collateral reinvestment practices, ESMA seeks to gather data elements relating to the type of term and maturity of cash collateral reinvestment.

327. It is confirmed that agent lenders acting as principal can have separate cash re-investment programmes and therefore would be subject to reporting cash re-investment. Cash re-investment should also include all underlying deals, e.g. repo market transactions.
328. Furthermore, the respondents stated that there is indeed maturity transformation linked to cash re-investment and that the WAM is being used for the re-investment of cash. Therefore, information about the type of term and maturity of cash collateral reinvestment would be available, albeit likely in risk analytics systems for which integration costs would occur. As maturity transformation can be analysed based on information gathered independently of the SFT reporting, no further data is required.
329. In response to the feedback provided in the consultation, if the average return on cash re-investment is not available for money market funds at the time of reporting, counterparties shall report the information available at the close of previous business day.

#### 4.3.10 Availability for reuse

330. The SFTR also foresees the need to report “whether the collateral is available for reuse” which is what the reporting element “Availability of reuse” would provide based on a boolean value (Yes/No).
331. Repo and reverse repo trades under GMRA and securities lending trades under GMSLA generally represent transfers of title and therefore securities that are provided as collateral would be available for re-use. However, bilateral collateral agreements could differ, and may only allow the re-use of some of the securities within the underlying collateral portfolio.
332. For the reporting of this data, a simple flag indicating whether reuse is possible was suggested at transaction level. The latest it could be reported is the timeline for reporting of collateral, i.e. the working day following the value date.
333. While GMRA and GMSLA allow reuse, margin lending is based on bilateral agreements which may or may not allow full or partial reuse (re-hypothecation) of the collateral portfolio. Therefore, an automated field on collateral reusability seems complex if not impossible for margin lending, as legal systems would need to be linked to trading

systems and adequately consider legal exceptions. In that regard ESMA decided to keep a data element to identify the availability of the collateral provided for reuse.

334. Based on the feedback received, it is confirmed that a data element to identify the availability for reuse of the collateral provided is useful as there is no possibility to derive this information otherwise with full accuracy.

335. This flag can also be used by entities that are not allowed to reuse collateral.

#### 4.3.11 Funding sources

336. ESMA seeks to collect position-level data (as a percentage of the total) on the funding sources used by prime brokers to finance margin loans, in accordance with the FSB global standards. Funding sources for other types of SFTs (repos, securities lending) do not need to be reported. Respondents to the consultations highlighted that the margin lending funding sources cannot be distinguished between counterparties, portfolios or products, as firms usually finance their prime brokerage activity at entity-level.

337. Prime brokers should provide information regarding the sources used to fund their activities, and the respective amounts, in base currency. The funding sources identified are specified the corresponding data fields.

#### 4.3.12 Market value of the securities on loan or borrowed or the securities used as collateral

338. The FSB recommends collecting information on the market value of the securities used in securities lending or borrowing transactions. Therefore it is proposed to include the market value of the securities as a required element of transaction data for this type of SFTs. It is envisaged that the reporting counterparties would update this information on a daily basis. The market value of the securities should be reported as at close of business of each business day as it is used for collateral management purpose, i.e. the market value used to calculate daily variation margin. Reporting entities should use the “Valuation update” action type.

339. In a similar fashion, the FSB recommends collecting information on the market value of collateral. Therefore, when the counterparties report the market value of collateral in accordance with the framework provided in section 4.3.7, they should report the market value as at close of business of each business day as it is used for collateral management purpose, i.e. the market value used to calculate daily variation margin.

#### 4.3.13 Clearing information

340. In the consultations, ESMA noted that four data fields were necessary to reflect the information related to central clearing of SFTs. The fields proposed and the logic of population of these fields were in line with the logic used in EMIR reporting. More specifically, the following fields were proposed:

- a. **Cleared** (indicates whether the transaction was centrally cleared or not). This field is required by the FSB for the global aggregation of SFT data. It is essential to help distinguish the SFTs a CCP becomes a counterparty to an SFT as a result of central clearing and the SFTs that are entered into by a CCP as part of its treasury operations. A report of a transaction between a clearing member and a CCP (and, if applicable, between a clearing member and its client) would be marked as “cleared” if it is a result of central clearing. A report of a transaction of a ‘CCP as a user’, i.e. entered into for the purposes of CCP treasury operations, would be marked as “not cleared” (i.e. the value “false” would have to be reported in the “Cleared” field).
- b. **CCP** (in the case of a contract that has been cleared, identifies the CCP that has cleared the contract). The field is necessary to be able to identify which information is relevant for the CCP supervisors. In the client clearing model, this field is particularly useful to identify the CCP in the report of the trade between the client and the clearing member. In combination with other fields, the CCP field could be helpful to address CCP interoperability.
- c. **Clearing Member**. The field would be most relevant in the agency clearing model, where the clearing member would not be subject to the reporting obligation. However, even in the case of principal clearing, it is valuable to be able to distinguish between (i) a client clearing a repo via a clearing member; and (ii) a client performing a repo with a clearing member, and separately the clearing member that is clearing an interdealer repo trade.
- d. **Clearing timestamp**. The clearing timestamp should be reported as the time when the CCP confirms that the trade is registered for clearing and when the CCP takes on the risk of the transaction. The clearing timestamp

is relevant to monitor the difference between execution time and clearing time and how it varies depending on the trading model (i.e. it is especially relevant for SFTs traded outside of electronic trading platforms) or clearing model (depending on the clearing model used, the clearing timestamp may or may not be the same as the trading timestamp). EMIR data has proved that such differences between the timestamps exist and are worth analysing.

341. The proposed fields are necessary for the effective monitoring of the financial stability risks including (but not limited to):

- a. The shifts towards or away from central clearing agreements and trends in the clearing models used (principal or agency clearing, indirect clearing). This would provide insights into the trends in reporting entities' counterparty risk.
- b. Data also enable the ex-post examination of SFT counterparties' behaviour during a crisis, for example, whether counterparties rush to clear all contracts when rumours of another counterparty's weakness emerge.
- c. The market shares of clearing members and the concentration risks in clearing provision.
- d. The examination of CCP's reliance on certain types of collateral. This is useful for CCP and wider banking supervision as risk could crystallise if the collateral issuer faces difficulty (for example in a default event).
- e. The examination of the time lag between the conclusion of the trade and clearing of a trade being concluded with the CCP (using the clearing timestamp).

342. ESMA would also like to highlight that the clearing fields proposed are aligned with those reported to TRs under EMIR. Therefore, this should facilitate the reporting for the entities that already provide derivative reports under EMIR.

#### 4.3.14 Settlement data

343. In the Discussion Paper, ESMA highlighted the role of SFTR reporting in identifying interconnectedness across the SFT markets and that a high degree of

interconnectedness can pose concentration risks. ESMA noted that the settlement fields could help identify concentrations at the level of settlement, assess the dependencies between counterparties and market infrastructures, and allow examining the places of settlement across different types of SFTs (e.g. domestically or abroad, in the books of a CSD or a settlement internaliser). The settlement fields would also help assess the interplay of the various services that direct or indirect participants of a CSD and CSDs provide to the SFT market players. ESMA also noted that the CSDR does not provide a full picture of how SFTs settle as it is not reported from the point of view of the counterparties to a trade. ESMA therefore proposed to require counterparties to report the following three fields related to settlement:

- a. Place of settlement
- b. Central Securities Depository
- c. CSD participant or indirect participant

344. Following feedback to the Discussion Paper, ESMA proposed delete the fields indicating the place of settlement and the CSD and only to require the CSD participant or indirect participant field as this would provide valuable information regarding the custodian of the SFT counterparty and could help address concentrations and reliance on certain CSD participants, as well as to monitor the link between the different services such entities provide.
345. There was support for the proposal set out in the Consultation Paper, although some respondents noted concerns that it may not be fully clear what should be reported in this field. Some respondents suggested renaming the field to “Intermediary acting on behalf of the counterparty” to avoid ambiguity when the SFT is settled outside a CSD. However, in ESMA’s view this would likely result in further ambiguity as “intermediary acting on behalf of the counterparty” could refer to a number of different actors in the chain, such as a broker or an agent lender.
346. Some other respondents proposed to use the term “settlement agent” instead of “CSD participant or indirect participant”. A settlement agent is defined in the EU Settlement Finality Directive as an entity providing to institutions and/or a central counterparty participating in systems, settlement accounts through which transfer orders within such systems are settled and, as the case may be, extending credit to those institutions and/or central counterparties for settlement purposes. ESMA believes that this definition would

not necessarily cover the relevant entity in the settlement chain, i.e. the custodian of the counterparty, as the custodian may not always be a settlement agent.

347. Therefore, ESMA has decided to keep the field CSD participant or indirect participant. ESMA would like to further clarify that this field is intended to cover the first entity in the custody chain (i.e. the custodian of the counterparty). For example, if an SFT counterparty has an account with a global custodian that holds securities at a CSD via a local agent, the SFT counterparty would report the global custodian as indirect CSD participant in the field CSD participant or indirect participant.
348. ESMA would like to confirm that this field is required in all cases, even if the SFT settles outside of the CSD. ESMA agrees that, strictly speaking, the term “CSD participant or indirect participant” may not always fully cover all cases where the settlement takes place outside of the CSD. However, ESMA believes that a “CSD participant or indirect participant” is the closest definition of the first entity in the custody chain set out in the EU legislation<sup>34</sup>. In response to the feedback to the Consultation Paper, ESMA would also like to clarify that the counterparties would not be required to report the CSD in which the entities are direct or indirect participants.
349. Finally, ESMA notes feedback from one participant suggesting that the field Place of settlement would be more meaningful and easier to report. While ESMA can see the benefits of including this field in the reporting requirements, it notes operational challenges in the case of transactions where the counterparties are not direct participants in a CSD due to the possibility of internalised settlement. ESMA notes there were objections to reporting the field Place of settlement in the Discussion Paper feedback as many respondents argued that the counterparties often do not know what the final place of settlement is.

#### 4.3.15 Master agreements

350. ESMA stated in the CP that it intends to gather information on the master agreements to enable the authorities to:
- a. evaluate the degree of standardisation of the SFT market via the usage of common legal frameworks. Standardisation is one of the key parameters in the assessment of the liquidity of the market; and

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<sup>34</sup> Defined in Directive 98/26/EC (Settlement Finality Directive)



- b. assess the observed SFT repo or lending rates against the related agreements to evaluate possible deviations from a statistical mean and link them to bilateral contracts or deviations, for example agreed optionality. This will increase the understanding about drivers of the SFT rates.
- 351. ESMA suggested retaining two data elements on master agreements. One field would require to choose a defined code list to specify the type of the master agreement that underlies the trade. In order to increase reconciliation and to ensure the accurate linking of collateral to loans in the case of net exposures, as detailed in section 4.3.7.5, ESMA intends to include a closed list of acceptable values for that field plus an additional free-text field where only bespoke agreements would be identified.
- 352. The respondents strongly supported the use of closed list of values and requested the inclusion of further agreements such as prime brokerage agreements (PBA). They also requested the monitoring of the free-text field to be able to update the closed list of values.
- 353. One respondent requested clarity on the reporting of the master agreement by tri-party providers which may not have this information available. As the reporting obligation stays with the reporting counterparties, ESMA understands that these entities need to ensure that the relevant information on the master agreement is shared among the parties participating in an SFT, the tri-party provider included.
- 354. The respondents rejected a potential use of the free-text field to describe the master agreement and specifically as reconcilable field.
- 355. While not objecting the reporting of master agreements some respondents pointed out that the standardisation takes place at trade convention, not at master agreement level.
- 356. ESMA also enquired about the use of a third field that would specify the version of a master agreement. The information on the version of a master agreement was considered as potentially relevant for the competent authorities to be able to monitor to what extent the counterparties use older versions of master agreements, which may be significantly different from the new ones (for example, having less flexibility of post-default provisions). However, based on the feedback received, ESMA would not put in place this requirement.

#### 4.3.16 Indemnification in the context of securities lending

357. In its “Policy recommendations to address structural vulnerabilities from asset management activities”<sup>35</sup>, the FSB seeks to address residual financial stability risks from securities lending activities that are not already addressed in other FSB recommendations. The FSB highlights that a gap remains with respect to the treatment of agent lender indemnities, and recommends the collection of relevant information and data through SFT data collection in order to monitor the potential risks posed by existing indemnification practices.
358. Following international development in this area, ESMA consulted on the suitability of collecting such information under SFTR. Several respondents highlighted the diversity and complexity of information on indemnifications (which are usually negotiated bilaterally), as well as the difficulty of collecting this information using a standardised reporting regime based on transaction-level data.
359. Based on the feedback received, and given that work in this area is still at an early stage, ESMA decided that it would not immediately start collecting data on indemnifications. However, ESMA will continue to monitor international developments, and may in the future include additional fields to collect data on securities lending indemnifications provided by agent lenders or asset managers, based on the future FSB recommendations in this area.

## 5 Transparency and availability of data

### 5.1 Operational standards for data collection

360. A key element for the correct functioning of the reporting regime under SFTR and ensuring the quality of SFT reporting is the validation by TRs of the data submission by the counterparties that are subject to the reporting obligation. Although counterparties are expected to report accurate and correct information, the SFTR places the responsibility for the actual collection of the data on the TRs. In accordance with Article 5(6) SFTR, in order to be registered under SFTR, TRs are required to have in place procedures “in order to verify the completeness and correctness of the details reported to them under Article 4(1).” From organisational perspective, the procedures are defined

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<sup>35</sup> <http://www.fsb.org/2017/01/policy-recommendations-to-address-structural-vulnerabilities-from-asset-management-activities/>

in paragraph 57. These procedures will rely on the operational standards for data collection established under the mandate under article 12(3)(b)(i) SFTR. ESMA has to develop the operational standards for data collection by TRs.

361. The operational standards are comprised of three different subsections: (i) validation of SFTs, (ii) reconciliation of SFTs and (iii) response to report submitting entities. The following subsections outline the relevant proposals, the feedback to those proposals and the way forward.

#### 5.1.1 Validation of SFTs

362. In the DP, ESMA proposed the detailed characteristics of the relevant practical rules for data validation, which cover:

- a. Authentication of a report submitting entity
- b. Schema validation of a submission
- c. Authorization / permission of a report submitting entity
- d. Logical validation of a submission
- e. Business rules or content validation of a submission

363. The proposed framework was accepted and most of the respondents confirmed that they have put in place a similar system for validation of submissions under EMIR.

364. With regards to the authentication of participants, ESMA proposed in the DP that the TRs establish a secure data exchange protocol with the report submitting entities using (i) web identification for those using web upload, (ii) secure public/private key authentication for automated secure connections or (iii) other advanced authentication protocols. The proposal was broadly supported by the respondents and will be reflected in the draft technical standards accordingly.

365. For the purposes of schema validation, ESMA proposed in the DP that all the submissions to the TRs should be made in Extensible Mark-up Language (XML) template based on an ISO 20022 universal financial industry message schema for SFT reporting. Moreover, ESMA indicated that the submission should be validated against and compliant with the XML Schema Definition (XSD) defined as the ISO 20022 reporting

standard for SFTs<sup>36</sup>. ESMA specified that the schema validation will not include business rules such as content dependencies between fields. Finally, ESMA also proposed in the DP that the TRs should automatically reject the submissions that are not compliant with the XSD. Few respondents indicated that they would prefer converting the submissions for authorities into ISO 20022 XSD, but still would like that ESMA allows for several possibilities for data submissions, such as flat comma separated values (csv) or text files or even FpML.

366. In order to ensure high quality data and in order to facilitate the integrity of the data, ESMA understands that the least number of different formats should be used by the reporting entities and the TRs. As explained in detail in section 4.1, in order to standardise the reporting, minimise subsequent costs for industry and ensure the harmonised implementation of data validations across TRs, ESMA proposed in the CP the use of ISO 20022 xml schema definition for reporting to TRs. The XSD as well as the ISO-compliant response messages will be made available in advance of the reporting start date.
367. In terms of authorisation / permission of the report submitting entities, ESMA proposed in the DP that the TRs will have to check whether the reporting submitting entity, i.e. the one submitting messages to the TR, is permissioned to report for the reporting entity that the reporting item specifies. In terms of implementation, ESMA considered the relevant entities should be identified in the fields Reporting counterparty and Entity responsible for the report and proposed that the TR maintains the relevant data to verify that the LEI pertaining to the report submitting entity is permissioned to report on behalf of the LEI code of the “Reporting counterparty” and “Entity responsible for the report”. In order to ensure the integrity of the data, ESMA proposed in the DP that the TR should reject any submissions by report submitting entities for reporting counterparties, where the report submitting entities are not duly permissioned.
368. Based on the feedback to the DP, ESMA proposed in the CP to remove the requirement for authorisation / permission in those cases defined under Article 4(3) SFTR where one of the counterparties to the trade is exempted from reporting its SFT and the SFT should be reported either by the financial counterparty of the management company of the UCITS or AIF. ESMA considers the capability of TRs to ensure that they process only

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<sup>36</sup> An XSD specifies the building blocks of the SFT reporting, including the number of (and order of) child elements, data types for elements and attributes and default and fixed values for elements and attributes.

SFT data only from entities which are entitled to report it as an essential requirement. Therefore, the TR should verify that the entities reporting on behalf of others, except in those cases defined under Article 4(3) SFTR are duly authorised to do so.

369. To ensure logical integrity of the data, ESMA proposed in the DP that the TRs check for each submission whether the report submitting entity is attempting to modify SFT which has not been reported or which has been cancelled<sup>37</sup>. ESMA proposed that the TRs use the UTI and the LEI of the counterparties to determine the uniqueness of the SFT and are able to reject those submissions made by report submitting entities attempting to amend UTIs, which were previously cancelled or not reported. ESMA understands that other situations, such as amendments of terminated or matured SFTs, can happen and should be allowed. In order to support the automatic treatment of this information, ESMA proposed that a specific response message describing the error is sent by the TR to the report submitting entity.
370. Finally, ESMA proposed in the DP to establish business validation rules for the submitted reporting data in addition to the xml schema validations. ESMA proposed that the content validations are based on the values included in the ITS on reporting and the additional validation rules. The additional rules would specify dependencies between certain fields, such as execution timestamp and maturity date. There was general agreement with the introduction of such validations. The additional validation rules will be developed after finalisation of the draft technical standards and made available to the TRs and the report submitting entities ahead of the commencement of reporting under SFTR.
371. Based on the feedback received to the DP, ESMA proposed in the CP the outright rejection of an SFT that lacks compliance with the content validations, rather than a warning notification as providing greater legal certainty for both the TR and the report submitting entity.
372. There was general agreement with the structure of the validation rules proposed in the Consultation Paper. However there were concerns raised regarding the requirement for TRs to verify whether an entity has permission to report on behalf of another counterparty. It is still considered that the TR maintains the relevant data to verify that the LEI pertaining to the “Report submitting entity” is permissioned to report on behalf of the LEI code of the “Reporting counterparty” and “Entity responsible for the report”. In

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<sup>37</sup> Under the current reporting rules for EMIR, cancelling of trade would mean that the contract has not taken place and has been reported in mistake. Same is proposed for SFTR.

order to ensure the integrity and confidentiality of the data, ESMA reiterates that the TR should reject any submissions by report submitting entities for reporting entities for which the reporting entities have not permissioned the report submitting entities.

## 5.1.2 Reconciliation of data

### 5.1.2.1 Scope of the reconciliation process

373. As part of the procedures for collection of data, ESMA proposed in the DP and further restated in the CP that the TRs reconcile the reported SFT data. ESMA set out the following general principles for performing reconciliation:

- a. The reconciliation process should start at the earliest possible after the deadline for reporting by counterparties in accordance with Article 4(1) SFTR passed (i.e. T+1).
- b. The reconciliation process should include all the SFTs submitted during the previous day and which, even if submitted before, have not been successfully reconciled. The amended SFTs, following the modifications made, including those reported under the different action types, by the relevant parties to the SFT, should be included in the immediately following reconciliation cycle.
- c. The SFTs that have expired or that have been terminated more than a month before the date on which the reconciliation process takes place should be removed from reconciliation.
- d. The daily reconciliation cycle should follow the same time schedule across all the TRs and should be terminated at the earliest possible time.
- e. There should be a comparison of the economic terms of the SFTs in accordance with section 5.1.2.3.
- f. Before the end of the day on which the reconciliation takes place, the TRs should notify the relevant counterparties to the SFT regarding any conflicting values per SFT reported by them in accordance with the response mechanisms included in Section 5.1.3.2.

374. The respondents to the consultations agreed with the proposed principles. One respondent indicated that a shorter period for exclusion of trade, e.g. one week, might be more efficient and gave as an example the way inter-TR reconciliation works currently

under EMIR. This is not actually the case, since the seven days' period refers only to inclusion of the derivatives in the requested list files that TRs exchange, but does not mean that the TRs exclude the derivatives from reconciliation. Under EMIR, there is no legal possibility to exclude trades from reconciliation until they are fully reconciled. Under SFTR, ESMA proposed in the CP and there was general agreement that terminated or matured trades that have not been reconciled within a month after the latest submission was received are automatically excluded from reconciliation. ESMA understands that, given the shorter term nature of most SFTs, this period should be sufficient for counterparties to agree on the details of the SFT. In addition, ESMA also proposed in the CP and there was a general agreement to flag and exclude the cancelled trades, i.e. those where the counterparties have initially submitted the SFT by mistake.

375. In summary, taking into account the policy objectives of the reconciliation in a dual sided reporting regime and the feedback received, ESMA would specify the requirement for reconciliation as pertaining to all the trades where:

- a. both counterparties have a reporting obligation, irrespective of whether the reporting obligation is delegated voluntarily or mandatory under Article 4(3) of SFTR to another entity;
- b. the SFT has not been terminated, has not matured and has not been cancelled with action type "error"
- c. the SFT has been terminated or has matured less than a month before the date on which the reconciliation process takes place.

#### 5.1.2.2 *Framework of the reconciliation process*

376. Differently to EMIR, the reporting of the SFT specific collateral is part of the economic terms of the SFT, hence it should be agreed between the two counterparties. This would bring further transparency to the collateral data and it will ensure its high quality. It will also allow the correct monitoring of financial stability and systemic risks and it would allow the reporting of high quality data to the FSB. Furthermore, ESMA stated in the DP that collateral data might be reported either at the level of individual SFT or at the level of a portfolio of collateralized SFTs. In the former case, there might be a one-to-one or one-to-many relationship between the loan and the collateral data. In the latter case there will be many-to-one or many-to-many relationships between the loan and the collateral data. Therefore, where many loans are covered by either one or many collateral

elements, it might be unnecessary, very costly and error-prone to repeat the reconciliation for all the collateral elements for each collateralized SFT.

377. The establishment of a separate reconciliation process for collateral data was widely commented. The majority of respondents indicated that to the extent that the data elements that are needed for collateral reconciliation are clearly identified, it would be irrelevant whether there are one or two processes. Some others further emphasised the position that given that sometimes the actual collateral might be known at a later stage it is more practical that it is reconciled separately. The identification and the linking between the loan data and collateral data is of primary importance in this case.
378. Some respondents to the DP disagreed with the establishment of separate process and indicated that they prefer to have a single EMIR-like process where some elements are reconciled multiple times. ESMA considers that this approach would be impractical, inefficient and error-prone and would lead to redundant duplication of processes. ESMA therefore proposed in the CP and respondents agreed that the reconciliation of loan and collateral data takes place separately following each of the stages described in paragraph 373. ESMA would clearly state that the SFT specific collateral, i.e. not the margin exchanged between the counterparties, has to be reported at the same level by both counterparties and it would not be possible that one reports collateral at transaction level and the other one at position level.
379. Furthermore, in order to ensure comparability of data and smooth functioning of the reconciliation process, ESMA proposed and respondents agreed s that the TRs reconcile only the latest state of a given SFT at the end of a given day. This includes the SFT loan data and the SFT collateral data.
380. ESMA explained in the DP the different stages of the reconciliation process that take place under EMIR. During the first stage, called Intra-TR reconciliation, the TRs intend to find the SFT in its own databases, based on the UTI and the LEIs of the counterparties, regardless of whether or not both counterparties to each SFT have reported to the given TR. If so, the TR compares the latest state of the reports and notifies the counterparties about the reconciliation status of their trade. Only after the completion of the intra-TR reconciliation process, those trades for which no other side has been found are included in the second stage called inter-TR reconciliation. Once the TR has determined that it has not received both sides of a trade, it includes it in the inter-TR reconciliation process that consists of two sub-processes. In the first sub-process, called pairing, the TR seeks the peer that has the other side of the trade. Once the TR determines the TR holding the



other side, the TRs initiate the second sub-process, termed matching during which the respective TRs exchange the actual economic terms of the trade. On a given business day, the TRs would be required to complete the full reconciliation process, consisting of the intra-TR reconciliation and both sub-processes of the Inter-TR reconciliation.

381. The respondents to the consultations agreed with the proposed logic and stressed that having a robust framework for UTI and a mandated use of LEI is essential to ensuring successful reconciliations. Similarly, to better support the reconciliation process where SFTs are collateralised on a net exposure basis, ESMA is standardising the codes used for master agreements, as those play a key role in determining the loans and collateral that are part of the net exposure.
382. Based on feedback, ESMA understands that it is also important to clearly highlight that the obligation for TRs to reconcile SFTs when they are reported to different TRs automatically removes any potential confidentiality restrictions regarding the exchange of data between the relevant TRs and the counterparties to the SFT or the report submitting entities. It is of utmost importance that the existence of any type of reconciliation break or lack of pairing is made available to the relevant entities as soon as possible and in a standardised, harmonized way.
383. In the Discussion Paper, ESMA proposed that the format and encoding of data files which are exchanged for the purposes of the inter-TR reconciliation between the TRs should be the same. Furthermore, with regards to establishing common format and encoding of the data files exchanged between the TRs for the reconciliation of SFT data reported to two TRs, ESMA proposed in the CP and respondents generally agreed the use of an ISO 20022 XSD containing a subset of all the reportable fields.
384. Given that the submission to the TRs will be made in ISO 20022 XSD and the provision of data to authorities will be instrumented in a similar fashion, ESMA considers that the use of ISO 20022 XSD for the inter-TR reconciliation will further enhance the process from compatibility perspective and will reduce any potential data transformation issues that might affect the quality of the data. The use of common XSD will ensure high quality data and reduce the risk related to non-reconciling records where the counterparties have reported identical data, but where the data transformations at the TR level led to differences. ESMA considers that the relevant cost impact to TRs will be significantly reduced given that they will be implementing ISO 20022 XSD processing at the counterparty reporting level and at the regulatory reporting level.

385. ESMA also proposed in the CP that there should be a confirmation of number of common paired and reconciled records between each pair of TRs for the purposes of establishing the data integrity of the reconciliation process. ESMA understands that the relevant information on this can be included as additional data in the relevant XML files.
386. Finally, ESMA also sought feedback on the time for completion of the reconciliation process. The respondents indicated that this would depend on the different TRs. However, the inter-TR reconciliation process cannot be initiated prior to the deadline for submission of data. Since the entities can submit data both on trade date and trade date+1, ESMA understands that, as mentioned in paragraph 373, the inter-TR reconciliation process would start as early as possible after the reporting deadline and would include all applicable non-reconciled trades. In order to further streamline the reconciliation process, ESMA proposed in the CP that the inter-TR stage of the reconciliation process should be terminated by 18.00 UTC on each day of the TARGET2 calendar. This proposal was widely commented by respondents and there was a mixed feedback. Some of them opposed the inclusion of a deadline for finalisation as the duration of the actual process is dependent on the TRs internal processes. Some others supported it as part of the harmonisation of the process. Overall, ESMA has not received any justified proposal to amend the proposed timeline or to remove it. In order to obtain consistent results of the reconciliation process, ESMA will keep the timeline requirement.
387. Following the completion of the inter-TR reconciliation process, ESMA expects that the TRs provides the relevant response, as described in section 5.1.3, to the reporting counterparties or entities responsible for reporting or, where appropriate, to the report submitting entities. This information should also be included in the report generated to authorities. When providing response to the report submitting entities, the TRs should take due care of safeguarding the confidentiality of the data.

#### 5.1.2.3 Data elements to be compared during the reconciliation process

388. In the DP and in the CP, ESMA outlined its understanding that high quality data under SFTR means fully reconciled data. Fully reconciled is understood as the lack of difference between the values reported for each field by the two counterparties in their respective submissions to the TRs. Alternatively, ESMA proposed that at least the common data fields relevant for the SFT, which are referred in Article 4(9) of SFTR and those other data elements that are subject to data collection by FSB, should be reconciled.

389. Most of the respondents to the DP and CP supported partial reconciliation which addresses those fields relevant for understanding the primary economic terms of an SFT. As reasons provided for not having full reconciliation, the respondents adduced time and cost considerations. ESMA agrees with this rationale, and proposed in the Consultation Paper to exclude the free-text fields from matching.
390. Additionally, ESMA also considered that certain data fields might not be fully matched and proposed that some degree of tolerance should be applied. ESMA proposed in the Consultation Paper that certain fields be subject to reconciliation in accordance with the defined tolerance (see Consultation Paper paragraph 364). While determining the actual rules on this aspect, ESMA proposed to take into account the potential trade-offs between quality of data and degrees of tolerance and between the degrees of tolerance and the completion of the reconciliation process. There are different levels of tolerance applied in the industry and across systems. Taken into account responses to the Consultation Paper, the fields where tolerance can be applied and the tolerance to be applied are as follows:
- a. Timestamp fields, such as execution timestamp where a difference of 1 hour between the times reported by the SFT trade counterparty's would be tolerated.
  - b. Numerical value fields that are calculated such as principal amount on maturity date, where a 5 basis point from the midpoint would be tolerated.
  - c. Percentage values, where matching up to the third digit after the decimal would be tolerated.
391. Furthermore, some respondents to the DP and CP proposed that a staged approach is put in place and only very few "must match" fields are chosen, while the list is extended gradually.
392. ESMA, however, understands that the reporting fields that are included in the loan and collateral table, except the Action type and Portfolio code, should be reconciled to ensure high quality SFT data. While there is a similar understanding under EMIR, the lack of initial specification of the process by ESMA due to lack of legal mandate, lead to (i) inconsistent reconciliation processes, (ii) inconsistent reconciliation timings, (iii) tolerances and categorisation of fields decided by TRs, (iv) lengthy change request

implementation<sup>38</sup> times. This situation, together with specific discretionary issues of particular TRs resulted in accumulation of significant number of non-reconciled trades and required the implementation of costly ad-hoc processes at authorities (ESMA included) and counterparties to understand the extent of the problem, to put in place solutions, to monitor the subsequent evolution of the reconciliation rates and to assess the suitability of the proposed solutions. Lower reconciliation rates and the lengthy process to increase them put at stake any over-reaching reporting regime.

393. Similar to the feedback received to the CP, under EMIR the market participants continue requesting a reduction of the number of reconcilable fields until the reporting entities and TRs reach a level of experience which would allow the extension of the fields subject to reconciliation. Therefore, building on the EMIR experience ESMA understands that:

- a. It is key to set out strict rules on the fields that are reconciled and on the tolerances to be applied,
- b. there is a learning curve and entities improve their reporting both in terms of reduction of number of rejected reports and in terms of reconciled reports
- c. it is key to prevent the accumulation of non-reconciled trades,
- d. it is essential to ensure the access of authorities to high quality data, which has been subject to consistent validation and reconciliation processes
- e. it is indispensable that there is certain flexibility in the kick-off of the full reconciliation of all the details of the SFTs.

394. As the regulator and supervisor of the TRs, ESMA is entrusted with the rule-making and the surveillance of the functioning of the TRs and has vast experience dealing with data quality issues. ESMA is adequately placed to monitor the evolution of the reconciliation rates and to be able to propose, direct, coordinate and evaluate the implementation of the relevant corrective actions.

395. Stemming from the above considerations, ESMA proposes to establish a two-phased approach to reconciliation. The first phase, which will comprise a reduced number of fields, will start together with the start of the reporting obligation under Art. 33(2)(a)(i) of SFTR. The second phase, which will add the rest of relevant transaction data fields,

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<sup>38</sup> Change request implementation is used in the IT context as the implementation of an adjustment of a system.

would kick off only when the rate of reconciled trades is sufficient to support the introduction of new reconciliation requirements without adding excessive burden to TRs and reporting counterparties. It is proposed that the start of the second phase of the reconciliation process, where the full set of fields will become subject to reconciliation, should be two years after the start of the reporting obligation referred to in Article 33(2)(a)(iv) of SFTR. The purpose of this delay is to allow the industry to adapt to the reporting requirements and reconciliation rules, to build a know-how on dealing with SFTs and to prevent the accumulation of non-reconciled trades that are never reconciled.

### 5.1.3 Common response on reporting

#### 5.1.3.1 Rejection response

396. As part of the use of the ISO 20022, ESMA proposed in the DP and the CP that standardised response messages compliant with ISO 20022 are sent by the TRs to the report submitting entities and, where relevant, reporting counterparties or entities responsible for reporting. As indicated in paragraph 48 the TR should enable the reporting counterparties or entities responsible for reporting to access the data reported on their behalf.
397. Stemming from Article 80(5) EMIR, which is cross-referred under SFTR, ESMA proposed that the response messages indicate, at the latest one hour after the submission is received by the TR, whether the submission (i) is accepted by the TR or (ii) is rejected, and if so, specify the type of failure - schema, permission, logical or business and the relevant field or fields affected. Although not all entities might have similar capacity of reaction to amend the incorrect submission, ESMA understands that having a standardised process will benefit the market as a whole and will ensure that the relevant entities can fulfil the requirement for timely amendment of SFTs.
398. It is worth noting that under SFTR, reporting-wise, it is not necessary to provide response in the scope of the SFT reporting in case of a problem with authentication of the users, given that per se such violation might not be uniquely attributable to SFTR reporting and even more, it will be extremely difficult, if not impossible to relate this information with specific SFTs.
399. Based on the feedback received to the DP, ESMA also proposed that TRs are able to reject individual SFTs in a reporting file when these SFTs were not compliant with the

validation rules to inform the report submitting entity to correct the relevant data as soon as possible.

400. In the Consultation Paper, ESMA proposed and respondents broadly agreed that the following minimum set of rejection categories at UTI level, which will specify the relevant errors:

- a. Schema – the SFT has been rejected, because of non-compliant schema.
- b. Permission – the SFT has been rejected, because the report submitting entity is not permissioned to report on behalf of the reporting counterparty.
- c. Logical – the SFT has been rejected, because the action type for the SFT is not logically correct.
- d. Business – the SFT is rejected, because the SFT was not compliant with one or more content validations.

#### 5.1.3.2 Reconciliation response and relevant statuses

401. ESMA proposed in the CP and respondents generally agreed that following the conclusion of the reconciliation process as described in paragraph 386 and no later than y the end of the day in which the reconciliation process takes place, the TRs should provide to the reporting counterparties or the entities acting on their behalf response messages describing whether the SFT is reconciled or not. In the latter case, the TRs should detail the relevant data elements where reconciliation breaks take place and providing both values reported. Furthermore, for each UTI reported, the TR should assign the following values with regards to the reconciliation of the SFT:

Table 20 - Reconciliation data	
Reconciliation categories	Allowable values
Reporting type	Single-sided/dual-sided
Reporting requirement for both counterparties	Yes/No
Pairing Status	Paired/unpaired
Loan reconciliation status	Reconciled/not reconciled
Collateral reconciliation status	Reconciled/not reconciled
Further modifications:	Yes/No

402. The reconciliation categories and the allowable values are described as follows:

- a. Reporting type will inform whether both counterparties to an SFT have reported to the same TR, i.e. dual-sided, or whether the TR is aware of only one side, i.e. single-sided.
- b. Reporting requirement for both counterparties relates to the existence or not of reporting obligation for both counterparties. If there is reporting obligation for only one of the parties, the SFT will not be intended to be reconciled. It is worth noting that the mandatory delegation under Article 4(3) of SFTR does not exempt the report of both sides of the transaction, but establishes a rule for the reporting.
- c. Pairing status will inform to what extent on the basis of the information provided on the data elements used to find the other side of an SFT, the TR has succeeded in doing so. or not.
- d. Loan reconciliation status will inform whether the data pertaining to the loan of an SFT subject to reconciliation has been fully reconciled.
- e. Collateral reconciliation status will inform to what extent the collateral data pertaining to an SFT has been reconciled.
- e. The category "Further modifications" will flag whether the SFT has been amended following the establishment of the latest values for reconciliation.

403. The exact content of the response messages and the establishment of "Error codes" will be part of the definition of the XSD and the relevant response messages.

#### 5.1.3.3 End-of-day (EoD) response

404. Some respondents to DP and CP questioned the need to provide rejection report or reconciliation status report in light of the fact that the specific transaction information would be sent to the entities in the course of the day and the information on reconciliation status would be present in the trade state report. However, as explained in the CP, ESMA considers that having end-of-day information on rejected trades is practical information for the entities (i) to corroborate their submissions, (ii) to act on any potential SFT that has not yet been corrected, and (iii) to enable straight-through processing and workflow automation. Furthermore, ESMA believes that specific response information on the status of the collateral information also is required. With regards to the reconciliation status of trades, it is worth noting that the trade state report will contain only the open

trades, but not only the open trades are subject to reconciliation. Therefore, both requirements are to be retained.

405. Based on the above, and responses received to the ESMA proposal in the Consultation Paper, a minimum set of end-of-day reports, generated at least in accordance with an XSD following uniform business specification, are to be made available by the TRs to the reporting counterparties, the entities responsible for reporting and, where relevant, the report submitting entities.

- a. Daily activity report – this report should contain all validated submissions made during the day either by the participant or an entity to which it has delegated its SFT reporting. This report should contain all reported data.
- b. Trade-state report – this report should contain the last state of each outstanding SFT, as well as its reconciliation status.
- c. Missing collateral report – this report should contain information on all the SFTs which are not reported as “uncollateralised” and where specific collateral information has not yet been provided.
- d. Rejection report – this report should contain all UTIs of SFT reports which have been rejected, together with the relevant error code for rejection.
- e. Reconciliation status report – this report should contain the reconciliation status of all the SFTs reported so far, except those SFTs that have expired or that have been terminated more than a month before the date on which the reconciliation process takes place.

406. In terms of the way in which the information is presented, ESMA agrees that all files might not be sent to the reporting counterparties, the entities responsible for reporting or where appropriate, the report submitting entities, but they should be accessible through the TR interface.

## **5.2 Public data**

407. ESMA proposed both in the DP and the CP to require Trade Repositories to publish a wider range of data than is currently available under EMIR, but a narrower range than will be made available to the FSB for the purpose of global aggregations.

408. In responses to both the Discussion and Consultation papers, ESMA noted requests from a range of industry associations that commercially sensitive data should not be



made public. Respondents raised specific concerns around granular data making it possible to identify counterparties in thinly traded markets. Set against this, other respondents noted that public data under EMIR are too high level to be of practical use.

409. A few respondents to the Consultation Paper noted there was an inconsistency in how the locations of the counterparty and other counterparty are treated. They noted the former is aggregated by EEA vs Non-EEA only, while the latter is not. In order to clarify, the aggregation requirement by EEA vs Non-EEA will apply to both cases consistently.
410. Some respondents asked ESMA to clarify whether aggregations by reconciliation status means by all statuses presented in paragraph 402 of the Consultation Paper. In the final report, ESMA proposes limiting the aggregations by reconciliation status to “reconciled” and “non-reconciled” only. Although more detailed reconciliation information (including pairing status and separate loan and collateral reconciliation statuses) are useful for ESMA and other competent authorities, this information appears to be too granular for the general public.
411. ESMA takes notes of the various remarks and will therefore require TRs to make data public under the following aggregations:
- a. The location of the reporting counterparty (EEA vs Non-EEA)
  - b. The location of the other counterparty (EEA vs Non-EEA)
  - c. The type of SFT (repo, securities lending, etc.)
  - d. The reconciliation status of the SFT
  - e. The trading venue (on or off trading venue), such as XXXX, XOFF, EEA MIC and non-EEA MIC;
  - f. Whether the SFT was cleared or not
  - g. How the collateral was managed (bilaterally or tri-party)
412. Although at present this list is exhaustive, ESMA may decide to require additional aggregations in future. ESMA also notes responses asking for clarification on how the Trade Repositories should carry out these aggregations. ESMA therefore intends to prepare an aggregation methodology guidance at a later stage.
413. As set out in the Consultation Paper, ESMA has taken note of confidentiality concerns but is also aware that some industry publications routinely contain data of a more granular nature than the data published under EMIR. Given that a number of the aggregations set out above are in line with industry publications, ESMA believes it is

possible to publish data according to these aggregations without compromising counterparty confidentiality.

414. One respondent asked ESMA to provide the source for exchange rates that are not published by the ECB.
415. ESMA intends to align the technical aspects of data publication with EMIR as much as possible. To allow for aggregating and comparison of data across TRs, ESMA is therefore proposing the following technical aspects:
- a. Cut off time at Friday 23:59:59
  - b. Provision of data by the next Tuesday following the Friday cut off
  - c. The data should be made available in an easily downloadable format, such as csv
  - d. End users should be able to access the previous 52 weeks' worth of data and
  - e. Both state and activity files should be published.
416. The feedback received was asking for clarity around how TRs were expected to make 52 weeks' worth of data available to end-users. ESMA has included as part of the rules that aggregate position data should be presented in a tabular format on the TR website, however ESMA does not intend to proscribe a method but notes that either making individual weekly data available on the website or allowing users to access a database with the previous 52 weeks' worth of data available would be acceptable
417. Furthermore, for the purpose of ensuring consistency with EMIR, ESMA is including some minor changes in the requirements for publication of data which would harmonise the framework for publication of aggregate position data.

## **5.3 Data made available to authorities**

### **5.3.1 Details of the SFTs to be provided to the authorities**

418. This section of the consultation paper covers the details of the SFTs to be provided to the entities included in Article 12(2) SFTR (authorities, hereinafter). The technical standards developed under Article 12(3)(c) of SFTR, included in Section 16 Annex IX – Draft RTS on access levels and terms of use under SFTR, specify the relevant levels of access to the data.

419. Furthermore, the empowerment under Article 12(3)(a) of SFTR requires ESMA, “in close cooperation with the ESCB and taking into account the needs of the entities referred to in Article 12(2) of SFTR to develop draft regulatory technical standards specifying [...] the details of SFTs referred to in paragraph 2”. In that respect, as mentioned in section 5.4, ESMA proposed in the CP that TRs should provide SFT data to the authorities using the same ISO 20022 reporting standard through which reporting counterparties provide SFT data to the TRs.
420. The TRs should provide the authorities at least with all the data elements that they have received for the SFTs reported. Further to this, ESMA considers that the authorities need to access some additional information on the SFTs reported as detailed in Section 5.3.2 below which could be, based on responses to the Consultation Paper, provided to authorities at the same time that Daily Activity and Trade State reports are available.

### 5.3.2 Additional information on the SFTs to be generated by TRs

#### 5.3.2.1 Rejection status field

421. In order to allow the authorities to have direct and immediate access to the SFT data, the TRs should ensure that, when making available the details of the SFTs, they also are able to provide information regarding whether an SFT report, either referring to a new SFT, a modification to an existing SFT or the termination of an SFT has been rejected. This information can only be generated in case the counterparties have used a consistent UTI identification for their submissions to the same TRs and the TRs would be thus able to track the relevant submissions. The rejection categories are defined in paragraph 400.
422. ESMA would expect that the above additional information is provided as granular as possible at SFT level. ESMA considers that this information is easily available to the TRs and would not require the performance of additional processes involving the other TRs, as in the case of the inter-TR reconciliation process. The respondents to the DP requested that ESMA clearly defines the relevant rejection statuses. Some of them flagged the schema rejection as potentially a very difficult category, given that in most cases the TR would not have information about the number of trade records affected or might not be able to identify the UTI. ESMA nevertheless would request a more detailed information on the difficulties that might be experienced in this respect.
423. No further information to the one provided in the DP on potential costs was provided. To recall respondents indicated those relating to hardware infrastructure, software and

system maintenance costs, as well as the costs resulting from new/increased connectivity, storage, transmission and management of the data. Nevertheless, ESMA believe that the additional benefits with regards to quality of the data which would be achieved by the authorities accessing the SFT data would significantly offset the costs incurred by the TRs.

#### 5.3.2.2 Reconciliation status data

424. Further to the category of rejection of an SFT, the information on the reconciliation of each SFT is very useful for authorities. ESMA intends to establish a closed list with the relevant reconciliation values for SFTs, which comprises all the potential outcomes of the reconciliation process. Based on the feedback received as well as the establishment of the inter-TR reconciliation process, the different values are specified in section 5.1.3.2. In this respect it is important to clarify that the reconciliation statuses will be included in the XSD.
425. The information on the reconciliation status of the SFTs should be made available in all relevant reports made available to the authorities. However, delays in successfully completing the inter-TR reconciliation process should not be a reason to delay the provision of data to authorities. An additional feedback from respondents was that the report generation processes at the TRs need to be carefully planned and it is not as scalable as the data collection. ESMA takes note of this, however, understands that the TRs should be able to adequately plan their internal processes and provide the authorities with direct and immediate access to the data.
426. In general, the respondents agreed that, in view of the reporting timeline and taking into account the duration of the reconciliation process, complete and exhaustive information on reconciliation at SFT level could be provided only on T+3. Notwithstanding this, ESMA understands that the relevant reconciliation information of the SFTs can be accurately updated and the authorities being informed of it at the earliest opportunity after the finalisation of the daily reconciliation cycle.

#### 5.3.2.3 TR that holds the other side of an SFT

427. In order to allow the authorities address potential double counting issues, when a trade is at least paired, ESMA proposed in the CP and respondents agreed that the TRs include an information on the TR which holds the other side of the SFT. This will ensure that any type of aggregation would be performed in a more seamless way.

### 5.3.3 Types of transaction-level reports to be provided to authorities

428. The provision of transaction-level reporting will allow all the relevant authorities to better assess the risks related to integrity of the price formation and the orderly functioning of the SFT markets. The reports related to rejection of SFTs and reconciliation status of SFTs will ensure that the authorities accessing the SFT data can have a timely and comprehensive view on the quality of the submissions of the relevant counterparties, as well as on the quality of the data that they will use for monitoring of the different risks to the financial system. A trade state report will also allow the authorities to access the most granular trade-level data, i.e. the latest state on all the outstanding trades that is required for financial stability, market monitoring and surveillance of bank-like risks and level of interconnectedness in the financial system.
429. The access to SFT data will allow the authorities also to obtain comprehensive information regarding the evolution of the market practices and the technological developments which enable market participants to use transactions other than SFTs as a source of funding, for liquidity and collateral management, as a yield-enhancement strategy, to cover short sales or for dividend tax arbitrage. Such transactions could have an equivalent economic effect and pose risks similar to SFTs, including pro-cyclicality brought about by fluctuating asset values and volatility; maturity or liquidity transformation stemming from financing long-term or illiquid assets through short-term or liquid assets; and financial contagion arising from interconnectedness of chains of transactions involving collateral reuse. Hence, the compatibility and integration of SFT data with the data reported under other reporting regimes existing in the EU is considered as essential for building the complete picture of the financial system. To allow such compatibility, most of the data fields that are present under EMIR, MiFID2 and SFTR are defined in a harmonised way.
430. Given that the transaction data will be provided in the same exact format and based on very similar XML schema definition (XSD), ESMA expects that, with regards to the content of the relevant data fields reported by the report submitting entities, no technical or other transformation is performed or undertaken by the TRs when making the data it available to authorities. The compliance with this requirement is included as part of the requirements for registration under SFTR in Section 3. Registration requirements under SFTR and under EMIR.

431. Stemming from the above considerations, when providing access to the authorities, the TRs should ensure that at least the following types of transaction data reports are provided to the authorities:

- a. All SFT submissions (this would include submissions of all action types for SFTs as well as about their respective reconciliation status) made on the previous working day;
- b. The latest state of the outstanding trades as of the close of the previous working day;
- c. All SFT submissions made under SFTR in accordance with certain criteria defined as of the day of the request by the authority;
- d. Daily report detailing the rejected SFTs and the reasons for rejection;
- e. Daily report detailing the reconciliation status of the SFTs and the reasons for lack of reconciliation.

432. Based on responses to the Consultation Paper, the reconciled data should be submitted to authorities as soon as it becomes available and no later than the end of the business day, e.g. 23:59:59 UTC.

#### 5.3.4 Types of position-level reports to be provided to authorities

433. The position-level information is of significant importance to the EU authorities, which are mandated to monitor the financial stability and the systemic risks of the financial system.

434. In addition to the transaction data reports that TRs furnish, stemming from the requirement for TRs to calculate position in SFTs under Article 5(5) SFTR, ESMA expects that the TRs provide the position reports as per the criteria indicated below. ESMA expects that all the position reports are provided in a XML files based on an ISO 20022. The relevant reporting schema definitions (XSDs), as well as the specifications on aggregating the data, will be made available to TRs in advance of the reporting start date. The position-level reports to be provided to the authorities, depending on their access levels determined in accordance with the technical standards under Article 12(3)(c) SFTR, should provide information on the exposures between the counterparties contain the following details:

- a. Reconciliation of the SFTs, by dividing the SFTs as reconciled and non-reconciled, in accordance with the values included in section 5.1.3.2;
- b. Type of SFT (repo, securities lending, etc.);
- c. Indication of centrally cleared or not;
- d. Trading venue (on vs. off-trading venue)
- e. Type of asset class of the collateral (cash, equities, corporate bonds, government bonds, etc.);
- f. Currency of the cash leg;
- g. Maturity bucket, where relevant, in 0,5% increments;
- h. Haircuts buckets, where relevant, in 0,5% increments;
- i. TR that used by the other counterparty.

435. Following the consideration of the responses to the CP and that delaying these reports would likely allow TRs to increase the number of matched transactions, position reports should be sent to authorities as early as possible and by end of T+2 at the latest.

436. ESMA explored to what extent the position reports should include reconciled and non-reconciled data in the same report or reconciled and non-reconciled data in two separate position reports. Based on the responses to the Consultation Paper, authorities should be provided by TRs with separate reports of reconciled and non-reconciled data. Separate reports would provide an indication of the respective quality, and thus reliability of, the data in each report. A periodic comparison of the respective reports of reconciled vis-à-vis non-reconciled data would also help highlight any changes in data quality over time.

437. Based on the international developments in this area, ESMA might further define additional position-level reports for TRs to provide to the authorities.

### 5.3.5 Types of standardised aggregated SFT reports for authorities

438. In accordance with the FSB final report on “standards and processes for global securities financing data collection and aggregation”, anonymised aggregate data should be submitted to FSB on a monthly basis by national/regional authorities. In order to allow EU authorities to submit such aggregate data to the FSB, the TRs should provide the EU authorities with aggregate data as per the FSB November 2015 report (or including any

additional SFT data elements subsequently defined, as required by the FSB) with the same frequency as established in the FSB report.

439. The specific content and methodology of these pre-calculations for the purpose of FSB aggregation will be defined by ESMA in the future.

## **5.4 Operational standards to aggregate and compare data across repositories**

440. Based on the feedback by respondents to the DP, including TRs, ESMA noted that providing data to authorities in the ISO 20022 standard would not be problematic, and it would further favour standardising data formats between TRs. Some respondents also mentioned that requiring the reporting population to use the ISO 20022 standard to report to Trade Repositories could be costly for them.
441. ESMA notes there would be benefits to ensuring that the TRs receive submissions in a standardised format as it would help speed up their ability to process the submissions before sending them on to authorities. Although some respondents noted there would be cost implications of requiring all submissions to be made in ISO 20022, ESMA understands there are a range of low cost tools available to convert different formats into XML and therefore also ISO 20022.
442. Furthermore, ESMA proposed moving the deadline to make data available to midday on the day after they have been reported, as processing data in time to achieve a 07:00 deadline could be challenging and a midday deadline would be in line with the reporting deadline set out under EMIR.
443. There were no further objections to the aforementioned two proposals, hence ESMA requires TRs to make available data to authorities using the ISO 20022 format and will require data to be made available to authorities by midday Co-ordinated Universal Time the day after they have been reported, rather than 07:00.

### **5.4.1 Avoidance of double counting**

444. Some respondents suggested that double counting would be most efficiently avoided if one counterparty to a trade was required to report to a Trade Repository, rather than both. As dual-sided reporting is a requirement derived from the Level I text of the SFTR, ESMA did not propose to change the SFTR reporting regime to be single-sided.



445. Based on the assessment of responses to the DP as well as further discussions, ESMA proposes to use the set of reconciliation values referred to in section 5.1.3.2.
446. The paper asked whether these criteria would be sufficient to avoid double counting in the data reported to authorities considering that:
- a. double counting occurs only for the single-sided reports excluding single-sided, unpaired but no reporting requirement
  - b. trades subject to double counting would be specifically identifiable.
447. Additionally, ESMA considers that double-counting in position reporting can be avoided by reflecting the relevant reconciliation statuses defined in section 5.1.3.2 and by providing to the authorities an aggregation which takes into account each of the TRs vis-à-vis which the one reporting to the authority has reconciled SFTs. The actual aggregation is included in Section 5.3.4 of this document.

## 6 Data access levels

### 6.1 Background and general aspects

448. The direct and immediate access to data is essential to allow authorities to fulfil their responsibilities and mandates, whereas the adequate establishment of access levels for authorities ensures the confidentiality of the trade repository data.

449. Under Article 12(3) of SFTR, it is mentioned that “in order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and taking into account the needs of the entities referred to in paragraph 2, develop draft regulatory technical standards specifying:

- a. the details of the information to which the entities referred to in paragraph 2 are to have access, taking into account their mandate and their specific needs;*
- b. the terms and conditions under which the entities referred to in paragraph 2 are to have direct and immediate access to data held in trade repositories.*

450. Recital 13 SFTR provides that ESMA should take into consideration the technical standards adopted pursuant to Article 81 of EMIR, and the future development of those technical standards when drawing up or proposing to revise the regulatory technical standards provided for in SFTR. Under Recital 13 of EMIR RTS on access levels “transaction data includes individual trade details”, therefore one of the objectives of this note is to define the scope of the transaction level in order to enable the relevant authorities fulfil their responsibilities and mandates.

451. The November 2015 FSB report has provided references to the CPSS-IOSCO reports on “OTC derivatives data reporting and aggregation requirements”<sup>39</sup> and on “Authorities’ access to trade repository data”<sup>40</sup> which have been used as references for determination of data access under Commission Delegated Regulation (EU) No 151/2013<sup>41</sup> (EMIR RTS on access levels, hereinafter). The references are provided in order to establish the type

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<sup>39</sup> <http://www.bis.org/cpmi/publ/d100.pdf>

<sup>40</sup> <http://www.bis.org/cpmi/publ/d110.pdf>

<sup>41</sup> Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data (OJ L 52, 23.2.2013, p. 33).

of data that should be sent to the FSB. This reference is very useful in order to confirm that the FSB's understanding on data access to SFTs is consistent with the data access to OTC derivatives and the three respective levels – transaction, position and aggregate.

452. It is worth mentioning that there are several new authorities mentioned in Article 12(2) SFTR compared to the ones originally listed in Article 81 of EMIR. Furthermore, Article 81 EMIR is amended by SFTR to align the authorities which have access to EMIR data with those having access with SFTR data. Hence, data access for the authorities which are listed below should be kept consistent across the technical standards developed under EMIR and SFTR. Those are the following:

- a. SSM function of ECB defined under Council Regulation 1024/2013<sup>42</sup>
- b. the resolution authorities designated under Article 3 of Directive 2014/59/EU (BRRD)<sup>43</sup>
- c. the Single Resolution Board established by Regulation (EU) No 806/2014 (SRMR)<sup>44</sup>;
- d. the European Banking Authority (EBA);
- e. the European Insurance and Occupational Pensions Authority (EIOPA);
- f. the authorities referred to in Article 16(1) SFTR, i.e. the prudential and sectorial supervisors, given that the securities and markets regulators cited in that Article are already covered.

453. Given the reporting obligation for EU branches of non-EU entities under Article 4 SFTR, but not under Article 9 EMIR, the access to data reported by EU branches of non-EU entities under SFTR should also be addressed. In this respect and taking into account that branch information for non-EU entities, and branches of EU entities will also be reported, the access in each of those cases should also be addressed.

454. Furthermore, ESMA has identified certain instances in the EMIR RTS on access levels which need to be better defined in order to achieve the objectives of the Regulation.

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<sup>42</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, (OJ L287, 29.10.2013, p.63)

<sup>43</sup> Directive 2014/59/EC of the European Parliament and the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, (OJ L173, 12.6.2014, p.190).

<sup>44</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, (OJ L 225, 30.7.2014, p.1).

Those are discussed in Section 6.1.2. Based on the experience in implementing EMIR RTS on access levels, ESMA understands that, where relevant, the technical standards should streamline the requirements for data access and allow their immediate implementation by the TRs. Therefore, ESMA's draft technical standards aim at providing explicit references to the actual access levels both under EMIR and under SFTR.

455. Taking into account the intention of the co-legislators, the access levels for authorities under SFTR and EMIR are very similar. The differences under the two reporting regimes are explained by the different responsibilities and mandates of the relevant authority with regards to the derivatives or SFTs in the scope of the respective reporting regime.
456. ESMA conducted joint consultation on the access levels under EMIR and under SFTR to avoid receiving contradictory comments on the definition of the access levels under SFTR and EMIR. This section of the Final report addresses the proposed access levels under SFTR and EMIR and the feedback received to those in joint fashion. However, where necessary, the appropriate differences and clarifications on the applicability of the rules under each Regulation are clearly stated.
457. For the purposes of the empowerment under Article 12(3)(d) SFTR, ESMA proposed in the Consultation Paper to include all the relevant aspects on operational standards for data access included in the Final report on data access, comparison and aggregation of data under Article 81 EMIR, submitted to the European Commission on 5 April 2016<sup>45</sup>. No specific comments were received on this proposal.

#### 6.1.1 General aspects of data access under EMIR and SFTR

458. Following the inclusion of the prudential and sectorial authorities, resolution authorities, SSM, EBA, EIOPA and SRB, there could potentially be more than 100 different authorities entitled to access data reported under EMIR and SFTR. However, in certain Member States many functions are centralised in one or two authorities.
459. Both under EMIR and under SFTR, the access levels of the authorities should be considered in their entirety. This means that the authority's access level is the result of the cumulative application of data access rights resulting from the different responsibilities and mandates of the authority, i.e. taking into account the responsibilities and mandates over counterparties, venues of executions, CCPs, currencies, products, underlying or securities and commodities, etc. Any relevant confidentiality aspects in this

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<sup>45</sup> [https://www.esma.europa.eu/sites/default/files/library/2016-422\\_final\\_report\\_rts\\_on\\_tr\\_data\\_under\\_art.81\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-422_final_report_rts_on_tr_data_under_art.81_emir.pdf)

regard are addressed at the authority's level. ESMA has not been made aware of any difficulties experienced by authorities while establishing the relevant internal procedures ensuring the confidentiality of data. ESMA consulted on the "one authority—one access" principle and received support for this proposal that is now reflected in this final report.

460. In some cases, both at Member State and at EU level, certain responsibilities and mandates are jointly exercised by two or more authorities. In that circumstance, ESMA understands that, given that all the relevant authorities are listed in Article 12(2) SFTR or Article 81(3) EMIR, they should all have access to the relevant data, i.e. two or more authorities might have duplicated access to a given derivative or SFT report which may fall under their joint responsibility. Furthermore, it is also possible that different responsibilities and mandates require the access to the same derivative or SFT report.

#### 6.1.2 Clarifications and amendments to existing provisions under EMIR RTS on access levels and their application for the purposes of SFTR RTS on access levels.

461. While implementing some of the requirements included in EMIR RTS on access levels, ESMA, the TRs and the relevant authorities, have found practical difficulties in establishing the correct access level. This sub-section addresses those instances where practical experience has shown that the rules establishing the access levels should be clearer and sets out the relevant proposals in this respect.

462. As a general observation, some respondents identified additional costs and certain practical difficulties in establishing the correct access levels for certain authorities responsible for the supervision of specific entities even with the clarifications included in the Consultation Paper. In this respect ESMA points out that the practical difficulties mentioned are not a result of ESMA's proposals, but of the way Level 1 is structured.

##### 6.1.2.1 Transaction data

463. One particular instance where ESMA had to issue guidance is related to the practical definition of "transaction data" and the actual implementation by TRs of the access to transaction data by the relevant authorities. As mentioned earlier, under Recital 13 of EMIR RTS on access levels "transaction data includes individual trade details".

464. The first aspect that had to be clarified in the implementation of the access levels under EMIR was the access by the authorities to all the submissions relating to a derivative contract to which, based on the criteria included in Article 2 of EMIR RTS on access level,

the relevant authority had the right to access. Some of the TRs initially implemented a very strict interpretation of the access level rules and provided access only to one side of the derivative trade understanding that the submissions made by the other counterparty should be kept confidential. ESMA clarified through a Q&A that all data related to a given derivative trade between two counterparties have to be seen by all the relevant authorities and requested the TRs to provide the data access accordingly. In the same way, ESMA proposed in the Consultation Paper that all the information regarding an SFT should be provided to each of the authorities having transaction level access to the particular SFT. The respondents welcomed this clarification of the rules.

465. Furthermore, while assessing the level of compliance of the reporting counterparties with the EMIR requirements, many NCAs faced difficulties in accessing the data reported by counterparties that either (i) did not pass the validation rules that the TRs put in place in order to ensure compliance with their obligations under Article 19 RTS on registration or (ii) passed the validations, but was not successfully reconciled between the TRs.
466. This hampered significantly the supervision of the compliance with the reporting obligation under EMIR, where the authorities were requiring the TRs to provide data on rejections or reconciliation status of trades, but had difficulties in obtaining more granular information because. This was due to at least two reasons: (i) the TRs were not keeping granular transaction-level data regarding all the rejections, due to lack of specific legal provision or (ii) the TRs were refusing to provide such data, because they consider this data to be confidential and not a part of the transaction data to which the authorities should have access to. This assumption is not accurate, because the rejection takes place with regards to a submission made by the counterparties to fulfil their reporting obligation and in case no validation is applied, the rejected submission should be recorded by the TR and the authority should have access to it. With regards to the reconciliation, it is key to ensure that the authorities have access to the reconciliation data in order to be able to supervise the compliance with the reporting obligation of the counterparties. In case the details of the derivative or the SFT reported by each of the counterparties do not match, the authority is not able to assess the risks and exposures stemming from the transaction.
467. ESMA further clarified this aspect through a Q&A and confirmed to the TRs that authorities, that have transaction-level access to data, should also have access to the rejections data as well as the reconciliation data, as these are also considered to be transaction data.

468. As described above, transaction data should include individual trade details. In the Consultation Paper, ESMA proposed that irrespective of whether the report for a derivative contract has been accepted or rejected by the TR, in accordance with the procedures put in place by the TR to comply with the requirements under Articles 19(a) and 19(b) of Commission Delegated Regulation 150/2013, of 19 December 2012, these details include the two sets of counterparty data set out in Table 1 of the Annex of Commission delegated regulation 148/2013, of 19 of December 2012, and the common data set out set out in Table 2 of the Annex of Commission delegated regulation 148/2013, of 19 of December 2012. Given the requirement for TRs to reconcile the details of derivatives under Article 19 of Commission Delegated Regulation 150/2013, of 19 December 2012, in those cases where the counterparties report to two different TRs, the transaction data comprises the data sets reported by the two counterparties to the two different TRs.
469. The above issues were addressed in the EMIR TR Q&A question 37. Based on the experience with EMIR reporting, ESMA understands that the content of this Q&A should be taken into account in the amendment of the EMIR RTS on access levels and it should also be included as part of the technical standards on data access under SFTR.
470. The respondents provided mixed feedback. The most widely discussed aspects related to the provision of access to rejected derivatives and, in the future, SFTs. Specific concerns were expressed with regards to (i) the practical impossibility to store some non-compliant data and (ii) the time of recordkeeping that non-compliant trades can be stored. In that regard, ESMA understands that the data on rejections that is to be made available is the one that the TR can technically store and process.
471. The provision of access to data stemming from reconciliation also raised some concerns from TRs due to potential increase in the volumes made available to authorities. ESMA has established a separate report on the reconciliation status of SFTs. Except for the reconciled data, ESMA highlights that the two sides of the SFT or derivative should not be provided on an ongoing basis to the authorities, but should be readily available when authorities need to access them.
472. The data on margins and reuse that is reported by counterparties under Article 4 of SFTR is linked to the underlying SFTs, hence it is also considered transaction data. However, as discussed at length in Section 4.3.9 given that the data on reuse will be reported by each reporting entity without indicating the specific counterparty, it will not be possible to provide the information to both authorities, but only to the ones that (i) have access to

the transaction level data of the counterparty that is reporting reuse, (ii) have access to the transaction level data of the SFTs based on the security reused or currency reinvested. In the case of margins, as this data is in essence the same type as the data reported under EMIR, and reported per pair of counterparties. Authorities that have transaction-level data access should also have access to this data.

#### 6.1.2.2 Responsibilities and mandates and jurisdiction of an authority

473. Another aspect on which ESMA consulted relates to the concept of jurisdiction used in the current EMIR RTS on access levels. The current drafting of Article 2(9) of EMIR RTS on access levels provides that “A trade repository shall provide the European Systemic Risk Board, ESMA and the relevant members of the ESCB with transaction level data: (a) for all counterparties within their respective jurisdictions; (b) for derivatives contracts where the reference entity of the derivative contract is located within their respective jurisdiction or where the reference obligation is sovereign debt of the respective jurisdiction.”
474. In the Consultation Paper ESMA indicated that jurisdiction could be understood as the territory (Member State, euro area or the EU as a whole) with respect to which the authority has responsibilities and mandates, or more specifically as the actual responsibilities and mandates that the authority has in the relevant territory. An example would be that under the broader interpretation of Article 2(9)(a) EMIR RTS on access levels, the authority would have access to the trades conducted by the counterparties in the Member State, the euro area or the EU, whereas under the stricter interpretation, the authority would have access only to the data reported by counterparties for which it is the competent authority. For example, the banking supervisor would not have access to trades which are conducted by investment firms or by funds. Another example would be that a resolution authority for banks would have access to all transactions of non-financial counterparties established in the same Member State of that authority or that the ECB-SSM would have access to the transactions conducted by any entity within the euro area, including investment firms, insurance companies and non-financial counterparties, although those are not directly supervised by ECB-SSM neither are part of a group supervised by ECB-SSM on a consolidated basis.
475. Under the functional approach, an authority would have access only to the transactions executed by counterparties that fall under the mandate of the authority. For example, the banking supervisor would have access to banks’ trades but not to trades which are



conducted by investment firms, funds or non-financial counterparties. Such an approach is similar to the MiFID transaction report system where the trades are reported to the home country authority.

476. In the consultation, ESMA outlined the benefits of establishing territorial or functional approach. They are presented in a summarised form in Table 21.

Table 21 – Summary of benefits of Territorial vs Functional approach	
Territorial	Functional
<ul style="list-style-type: none"> <li>• Less data fragmentation</li> </ul>	<ul style="list-style-type: none"> <li>• More accurate reflection of responsibilities and mandates under Level 1 text</li> </ul>
<ul style="list-style-type: none"> <li>• Less ad-hoc exchanges</li> </ul>	<ul style="list-style-type: none"> <li>• Clear separation of functions between authorities</li> </ul>
<ul style="list-style-type: none"> <li>• Less error-prone implementation by the TRs</li> </ul>	<ul style="list-style-type: none"> <li>• Greater confidentiality of data</li> </ul>
	<ul style="list-style-type: none"> <li>• Reduction of risk of misuse of data</li> </ul>

477. It is worth noting that, in general, a very broad access level under territorial approach is not risk free. Many authorities would have access to data that might only indirectly affect their responsibilities and mandates. This increases the risk of potential misuse of data and inadequate confidential treatment. After considering the consultation feedback, ESMA understands that such a risk cannot be justified and access to data need to be supported by specific mandates.
478. Following the feedback and the subsequent further assessment of responsibilities and mandates of the authorities, ESMA considered the interaction between some mandates, specifically those referring to issuance of currency and assessment of systemic risks for financial stability. The particularities of both mandates are discussed in sections 6.1.2.3 and 6.1.2.4
479. Therefore, based on the above considerations and feedback received, ESMA decided to keep the functional approach under both SFTR and EMIR, but extended the functions to be considered. This resulted in a single approach to the two standards, in a broader access level under EMIR, while still reflecting the link of SFTs to the monetary policy function of central banks.

### 6.1.2.3 Issuer of currency mandate

480. Several authorities, mainly central banks, expressed interest for wider access to data both under EMIR and under SFTR, in order to fulfil their needs. ESMA's analysis shows that there are close links between some of the SFTs, for instance repos, and the transmission of monetary policy. Hence ESMA considers that it is justified that the access level of ESCB as issuer of the currency should also include transaction data for SFTs in the currency issued by that ESCB member. This would mean in practice that a NCB under its mandate as issuer of the currency would have access to all SFTs where either the currency of the loan, or one of the currencies of the collateral<sup>46</sup> used in the SFT, is the currency of issuance of the NCB. Under this approach, all the central banks of the euro area would have access to all SFTs in euros, i.e. all transactions collateralised with securities or cash denominated in euros, or where the loan (whether cash or securities) leg is in euro.
481. As ESMA pointed out in the consultation paper, such a link with the transmission of monetary policy is not immediate for derivatives. While SFTs might be intrinsically related to the transmission and implementation of monetary policy, derivatives are primarily used to (i) hedge or obtain exposures to financial or non-financial risks or assets, (ii) create option ability, (iii) provide or obtain leverage, (iv) switch asset allocation or (v) set out expectations on the evolution of financial and non-financial assets.
482. Given that the entities can tailor the terms of the contracts, the access to transaction data on OTC derivatives allows for (i) the assessment of hedging of exposures, (ii) the assessment of creation of optionality through OTC derivatives. The access to position data is more appropriate for carrying out the following activities: (i) to assess the build-up of leverage, (ii) to assess a switch in asset allocation, and (iii) to monitor changes in expectations of participants in response to the evolution of financial and non-financial assets risks and trends.
483. Therefore, ESMA's analysis in the Consultation Paper concluded that, unlike SFTs, individual derivative transactions do not keep a direct relationship with the transmission and implementation of monetary policy, while position-level derivative exposures are bear a more direct link.

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<sup>46</sup> Usually the cash in the collateral of securities and commodities lending and borrowing transactions and margin lending transactions is in a single currency, however nothing prevents the counterparties to agree on several currencies.

484. Therefore, under the issuer of currency mandate, the access to data under SFTR is to transaction level data, and under EMIR to position-level data, in the relevant currency.

#### 6.1.2.4 Financial stability mandate

485. Some respondents indicated that ESMA should better take into account the mandates relating to assessment of systemic risks to financial stability of the central banks, as the possibility to carry out this systemic risk assessment is closely linked with the access to the broadest spectrum of markets and participants. The same conclusion was reached by the CPSS-IOSCO's final report regarding Authorities' access to trade repository data.

486. ESMA agrees that the monitoring of systemic risks to financial stability should be taken into account. ESMA has amended the draft RTS to clearly specify that the authorities that have financial stability mandate should have access to transaction level data reported under both EMIR and SFTR by all the entities, or executed on trading venues, established in the jurisdiction for which they have a financial stability mandate. This would mean that the authorities with a financial stability mandate for a single Member State will have access to all transactions (under both EMIR and SFTR) of entities or markets established in that Member State. Similarly, the ECB will have access to all transactions of counterparties or markets established in the Euro area.

487. While the responsibility of assessment of systemic risks to financial stability is attributable to central banks, ESMA understands that there might be instances where authorities other than central banks exercise such mandate. ESMA therefore has included the access to data based on the financial stability mandate as a separate provision in the technical standards on data access not linked to a specific type of authority.

488. The three European Supervisory Authorities, ESMA EBA and EIOPA, and the ESRB are entrusted with a financial stability mandate for the Union, so they have access to all transactions reported to trade repositories under EMIR or SFTR.

#### 6.1.3 Home and host authority

489. For the purposes of this document, home authority is considered as the authority of the Member State where the headquarters of the relevant counterparty subject to reporting obligation are established. Host authority is considered as the authority of the Member State where the branch or the subsidiary that has concluded the transaction is operating.

#### 6.1.4 Definition of data access in the case of branches under SFTR<sup>47</sup>

490. As indicated in the Consultation Paper, a particularity of SFTR is that it requires the reporting of trades entered not only by the headquarters of a company, but also by its branches. The rationale for this is outlined in section 2.2. Therefore, this aspect is taken into account when defining the access levels under SFTR. It is important to define: (i) access to data reported by branches established in the Union of non-EU entities; but also (ii) access to data reported by non-EU branches of EU entities; as well as (iii) access to data reported by EU branches of EU entities.
491. Article 16 SFTR contains a closed list of legislation under which a competent authority for the purposes of SFTR should be designated. To establish a consistent approach for data access, ESMA proposed and respondents agreed that access to trades reported by branches is provided to those authorities listed in Article 12(2) for which access to SFTR data is necessary to exercise their duties.
492. Under EMIR, branches are not explicitly referred; given that the systemic risks are considered to be borne by the entity as a whole, no specific responsibility with regards to branches is allocated to the competent authorities.
493. To the extent possible, and where the relevant timeline for submission of the technical standards under SFTR allows it, ESMA has set out proposals that aim at ensuring consistency between the access levels proposed for authorities and any EU initiatives in defining the exercise of supervisory responsibilities and mandates. ESMA points out that the rules on data access by no means constitute an assessment or expression of position with regards to any work on definition of supervisory responsibilities for prudential or market conduct authorities in the context of branches.
494. While generally the supervision of branches is attributed to the home authority, certain EU legislation establishes supervisory responsibilities also for host authorities. Under MiFID, the responsibility for supervision of branches of investment firms is for the home authority, but it is possible to establish an arrangement where the supervision is done by or shared with the host authority. Pursuant to Article 4(2) SSMR, ECB in carrying out its tasks within a SSM is entrusted with certain supervisory powers towards branches established and operating in participating Member States of institutions established in non-participating Member States. It is worth noting however that ECB–SSM has no

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<sup>47</sup> EMIR does not require identification of branches of EU entities, neither the reporting of trades concluded in the course of the activities of a branch in the EU of entity established in third country.

mandate over branches of third country entities in the EU both participating and not participating Member States.

495. The national prudential authorities participating in the SSM have exclusive powers over third country branches operating in their Member State. Taking into account the framework under Articles 40-46 CRD, the supervision of branches in participating Member State of entities established in non-participating Member State is entrusted to the home prudential authorities, however in light of Article 4(3) SSMR and given the cooperative framework of SSM, ESMA understands that the host prudential authority also has some supervisory responsibilities.
496. In the case of resolution authorities, the responsibilities and mandates framework is substantially similar to the one on prudential supervision. The access is mainly to the home resolution authority, however in certain occasions, the host authority of where the branch is operating could request under Article 51 of CRD that the branch is considered as significant. In that case the home resolution authority shall consult the resolution plan of an entity with the relevant authorities where a significant branch is located. Furthermore, home and the host resolution authorities can carry out joint supervisory actions in emergency situations.
497. The relevant situations concerning branches are discussed in greater detail in the specific sections of the types of authorities.

#### 6.1.5 Definition of data access in the case of subsidiaries and groups (EMIR and SFTR)

498. The access to data reported by subsidiaries is one of the areas of interest for prudential, conduct and resolution authorities.
499. EMIR provides that, where appropriate, rules applicable to financial counterparties should also apply to non-financial counterparties (NFCs). The legislator recognises that NFCs use OTC derivative contracts, inter alia, to cover themselves against risks directly linked to their commercial or treasury financing activities. Therefore, EMIR was drafted with requirements applicable to NFCs that differ depending on the level of non-hedging activity of the NFC in OTC derivatives. When this activity exceeds certain thresholds at group level<sup>48</sup>, the NFC becomes subject to similar requirements to those applicable to

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<sup>48</sup> The thresholds are defined at group level per asset class in Article 11 of Commission Delegated Regulation (EU) No 149/2013, OJ L52 23.02.2013, p.11

financial counterparties, and is referred to as an NFC above the threshold or an “NFC+”. In particular, NFC+ are subject to the clearing obligation (Article 4 of EMIR) and to bilateral margining (Article 11(3) of EMIR) while NFC- are exempted from those two requirements. Hence in order to be able to supervise the compliance of the relevant entities, the national competent authorities need to access also transaction data of the subsidiaries and of the relevant holding companies, that is parent undertakings, in the group.

500. Under CRD IV, CRR and SSMR, ECB in carrying out its tasks within a single supervisory mechanism and the national authorities competent for prudential supervision can be designated also as consolidating supervisors. ECB-SSM is entitled with the supervision on a consolidated basis over credit institutions’ parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies<sup>49</sup>, and to participate in supervision on a consolidated basis, including in colleges of supervisors without prejudice to the participation of national competent authorities in those colleges as observers, in relation to parents not established in one of the participating Member State. Those groups are included in the SSM website.
501. The powers of resolution authorities should also apply to holding companies where both the holding company is failing or likely to fail and a subsidiary institution, whether in the Union or in a third country, is failing or likely to fail. In addition, notwithstanding the fact that a holding company might not be failing or likely to fail, the powers of resolution authorities should apply to the holding company where one or more subsidiary institutions meet the conditions for resolution, or a third-country institution meets the conditions for resolution in that third country and the application of the resolution tools and powers in relation to the holding company is necessary for the resolution of one or more of its subsidiaries or for the resolution of the group as a whole.
502. Under BRRD and SRMR, the group resolution authority is either the one of the member state where the consolidating supervisor is located or the SRB. SRB is competent for the resolution of the groups for which the ECB-SSM is the consolidating supervisor.
503. Information on derivatives or SFTs on a consolidated basis is important for the relevant authorities to fulfil their responsibilities and mandates. The main difficulty consists in the

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<sup>49</sup> ESMA is aware that in certain cases, the holding company might not be financial institution; however, in that case, it is also highly unlikely that that entity would conclude derivative contracts or SFTs.

practical impossibility to identify the subsidiaries under the current structure of the Legal Entity Identifier code (LEI) and the lack of relationship data. However, the recent decision of the LEI ROC with regards to collection of relationship data and identification of immediate and ultimate parents<sup>50</sup>, which needs to be completed by the registered entities by the end of 2017, should allow the TRs to be able to filter the trades on that basis.

504. Although there is some uncertainty on the forthcoming work of LEI data collection on relationship (group) information, ESMA included a reference in the amended EMIR RTS on access levels and in the draft SFTR RTS on access levels that, where the LEIs allows TRs to identify group relationships, the TR should be able to provide data to the consolidating supervisor and the relevant resolution authority on the derivatives concluded by the subsidiaries. While one respondent indicated that, in their opinion, the term “subsidiary” is not defined in SFTR, though it is defined in EMIR. ESMA notes that the term “subsidiary” is described in Articles 1 and 2 of Directive 83/349/EEC, similarly to the term “parent undertaking”. More importantly, however, these terms need to be taken into account by the TRs when they establish the access rights for all the authorities that are competent with regards to the regulations included under Article 16 of SFTR. To conclude, ESMA will maintain the use of the terms subsidiary and parent undertaking, as they are defined in the regulations under which the relevant authorities listed in Article 12(2) of SFTR have responsibilities and mandates.
505. As mentioned in paragraph 459, the access levels for authorities should be considered in their entirety, hence the assessment in this section is complementary to the conclusions under the rest of relevant sections.

#### 6.1.6 Definition of data access with regards to commodities

506. The commodity derivatives to be reported under EMIR are clearly identified under MiFID. However, as mentioned in section 4.2.4.3, the identification of commodities used either as the loan subject to the commodities lending or borrowing transaction or as one of the collateral components to an SFT, remains a challenging area. The feedback received to the two rounds of consultation was extremely limited, which suggests limited interest by authorities for these type of transactions for financial stability purposes. There is only a classification of the commodities based on the one existing for commodity derivatives under MiFIR, however this classification on its own might not suffice to identify

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<sup>50</sup> [http://www.leiroc.org/publications/gls/lou\\_20161003-1.pdf](http://www.leiroc.org/publications/gls/lou_20161003-1.pdf)

unequivocally the authority and the relevant Member State or euro area, hence it will not be able to establish the access levels from that perspective. The access to data from counterparty, venue or currency perspective is established by the relevant provisions covering those types of accesses.

507. An additional practical challenge relates to the circumstance that the list of authorities which are included under Article 12(2) SFTR comprises only financial market authorities, but it does not specify any particular entity that have specific responsibilities and mandates towards commodities only or mainly. Nevertheless, for the purpose of completeness, ESMA has included in the draft RTS provisions that relate to the access to SFT regarding commodities lent or borrowed or used as collateral.

## **6.2 Definition of access levels under SFTR for authorities which have access to data under EMIR**

508. Considering that the data access under SFTR has to take into consideration the responsibilities and mandates similar to EMIR, ESMA proposed and respondents generally agreed that the authorities, which already have access to data under the EMIR RTS on access levels, would at least keep the same level of access to data under SFTR. Still, further access levels can be added in order to better address the supervision of the relevant risks, the different scope of application, the fulfilment of the relevant needs stemming from responsibilities and mandates under SFTR, as well as the more granular information which is reported with regards to the collateral.

509. Besides the clarifications included in the previous sections 6.1.1 ESMA does not consider necessary any further amendment to the specific access rights of the authorities which were already accessing EMIR data. The updated rules on data access under EMIR are included in Section 17 of this final report.

### **6.2.1 NCAs for securities and markets (defined in points f), j) and o) of Article 81(3) EMIR and points e), i) and m) of Article 12(2) SFTR)**

510. Under EMIR, the national competent authorities have access to the details of derivatives contracts where one of the counterparties, the venue of execution, the participants, the underlying or the derivative contract are in the scope of their responsibilities and mandates. In practice this means that the NCAs have access to all the trades where they either supervise the entities, the venues or the contracts traded. Furthermore, stemming



from the analysis under section 6.1.5, ESMA is proposing the inclusion of reference to access to data of subsidiaries of supervised entities.

511. Using the EMIR access levels for the purposes of ensuring consistency, and taking into account the aspects discussed under sections 6.1.1 to 6.1.5, the following approach is proposed under SFTR. ESMA proposed in the Consultation Paper and respondents agreed that the NCA for securities and markets will have access to the following:

- a. SFTs concluded by counterparties established in the NCA's Member State,
- b. SFTs concluded by branches and subsidiaries operating in another Member State or in a third country of counterparties established in the NCA's Member State,
- c. SFTs concluded by branches operating in the Member State of counterparties established in third country,
- d. SFTs concluded by branches operating in the NCA's Member State of counterparties established in another Member State, where an agreement with the other authority for the purposes of SFTR exists,
- e. SFTs concluded on venues established in the Member State,
- f. SFTs where the NCA is competent for the supervision of either the securities lent or borrowed or those that are provided as collateral or is competent for the supervision of the issuer of any of those<sup>51</sup>,
- g. SFTs where the authority is competent either for the commodities lent or borrowed or for those that are posted as collateral,
- h. SFTs where the authority is competent for a benchmark<sup>52</sup> which has been used in the SFTs.

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<sup>51</sup> This is the case for securities issued in a given Member State

<sup>52</sup> Under Article 3(3) of Regulation (EU) No 2016/1011 (Benchmarks Regulation) on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, *benchmark means any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined, or an index that is used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees*

## 6.2.2 Authorities competent for CCPs

512. From derivatives point of view, CCPs conclude derivative contracts as part of their clearing and novation functions. EMIR RTS on access levels also makes reference to the reporting of those trades and no amendments to the access levels are considered. However, from SFTR perspective, the CCPs can conclude SFTs for three reasons:

- a. Clearing and novation of SFTs;
- b. Secured investment of own treasury funds;
- c. Secured investment of cash collateral received in non-cash assets pursuant to Article 45(2) of Commission Delegated Regulation 153/2013.

513. In accordance with the guidance on reporting in section 4.3.11, only the first type of transaction would be considered as “cleared”, whereas the rest of SFTs will be entered by the CCP in “user” capacity. ESMA proposed in the CP and respondents agreed that the authorities supervising CCPs, should have access to all three types of SFTs, hence ESMA proposes that the TRs provide access to the authorities supervising the CCP to all trades where the CCP is counterparty or where the SFT is reported as cleared.

## 6.2.3 Members of ESCB

514. The functions of issuer of currency and monitoring of systemic risks to financial stability, which generally fall under the responsibilities of the relevant members of the ESCB, have already been addressed under sections 6.1.2.3 and 6.1.2.4 of this Final report. Where the members of the ESCB perform other functions, these are covered by the specific mandates.

515. As proposed in section 6.1.1, there should be a single access at authority level which encompass all the relevant responsibilities and mandates. No further comments were received regarding the access by members of ESCB.

## 6.2.4 Authorities competent for takeover bids

516. The authorities designated by EU Member States as competent for takeover bids supervise bids for the purposes of the rules which they make or introduce pursuant to Directive 2004/25/EC<sup>53</sup>. Consistently with the provisions under Article 2(6) and 2(7) EMIR

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<sup>53</sup> Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L142, 30.4.2004, p. 12).

RTS on access levels, ESMA proposed in the Consultation Paper to refer to “securities lent or borrowed or provided as collateral” rather than to “underlying” as in the case of EMIR RTS on access levels. No further comments were received on this proposal hence it is retained.

## 6.2.5 ESMA and ESRB

517. In the CP, ESMA described the mandates of ESMA and ESRB.

518. Under Article 1(5) of Regulation (EU) No 1095/2010 (ESMA Regulation)<sup>54</sup> ESMA is required to contribute to a) improving the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision; (b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets; (c) strengthening international supervisory coordination; (d) preventing regulatory arbitrage and promoting equal conditions of competition; (e) ensuring the taking of credit and other risks are appropriately regulated and supervised; and (f) enhancing customer protection. Furthermore, it is provided that ESMA shall contribute to ensuring the consistent, efficient and effective of legal acts adopted in the Union, shall foster supervisory convergence, provide opinion to the European Parliament, Council and Commission and undertake economic analyses of the markets to promote the achievement of the ESMA's objective. It is also specified that ESMA shall pay particular attention to any systemic risk posed by financial market participants, the failure of which may impair the operation of the financial system or of the real economy.

519. Article 3 of Regulation 1092/2010<sup>55</sup> (ESRB Regulation, hereinafter) provides that ESRB shall be responsible for the macro-prudential oversight of the financial system within the Union in order to contribute to the prevention or mitigation of systemic risks to financial stability in the Union that arise from developments within the financial system and taking into account macroeconomic developments, so as to avoid periods of widespread financial distress. It shall contribute to the smooth functioning of the internal market and thereby ensure a sustainable contribution of the financial sector to economic growth.

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<sup>54</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 84).

<sup>55</sup> Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on the European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

520. The ESRB shall carry out the following tasks: (a) determining and/or collecting and analysing all the relevant and necessary information, for the purposes of achieving its the objectives; (b) identifying and prioritising systemic risks; (c) issuing warnings where such systemic risks are deemed to be significant and, where appropriate, making those warnings public; (d) issuing recommendations for remedial action in response to the risks identified and, where appropriate, making those recommendations public; when the ESRB determines that an emergency situation may arise pursuant to Article 18 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 issuing a confidential warning addressed to the Council and providing the Council with an assessment of the situation, in order to enable the Council to assess the need to adopt a decision addressed to the ESAs determining the existence of an emergency situation; (f) monitoring the follow-up to warnings and recommendations; (g) cooperating closely with all the other parties to the ESFS; where appropriate, providing the ESAs with the information on systemic risks required for the performance of their tasks; and, in particular, in collaboration with the ESAs, developing a common set of quantitative and qualitative indicators (risk dashboard) to identify and measure systemic risk; (h) participating, where appropriate, in the Joint Committee; (i) coordinating its actions with those of international financial organisations, particularly the IMF and the FSB as well as the relevant bodies in third countries on matters related to macro-prudential oversight; (j) carrying out other related tasks as specified in Union legislation.
521. Furthermore, ESMA is the supervisory authority for trade repositories in the Union. To be able to perform its responsibilities and mandates as supervisor of TRs, ESMA needs the broadest level of access to TR data reported in the Union.
522. Stemming from above and similar to the access levels under EMIR, ESMA and ESRB should be granted access to all data reported by counterparties and branches with reporting obligation under SFTR. This proposal was not objected by the respondents to the CP, hence ESMA keeps it.
523. The access levels of the other two ESAs are defined under section 6.3.1.

#### 6.2.6 ACER

524. ACER's overall mission, as stated in its founding regulation, is to complement and coordinate the work of national energy regulators at EU level, and to work towards the completion of the single EU energy market for electricity and natural gas. ESMA

proposed in the Consultation Paper and respondents agreed that ACER's data access under SFTR should be to those SFTs where the commodity lent or borrowed or provided as collateral is energy contracts for which ACER is competent. This proposal was not objected by the respondents to the consultation.

#### 6.2.7 Third country authorities

525. There is also a difference between EMIR and SFTR with regards to third country authorities' direct data access. Under EMIR, direct access can be provided to authorities of third country that have entered into an international agreement with the Union as referred to in Article 75 EMIR or the relevant authorities of a third country that have entered into a cooperation arrangement with ESMA referred to in Article 76 EMIR. The latter is signed with authorities from third country where there is no TR established. ESMA has already signed such an agreement with the Reserve Bank of Australia and the Australian Securities and Investments Commission.

526. Under SFTR, direct access can only be granted to authorities from third countries which are included in the implementing act adopted by the EC under Article 19(1) SFTR. The implementing act under Article 19(1) SFTR will determine that the legal and supervisory arrangements of a third country ensure that:

- a. trade repositories authorised in that third country comply with legally binding requirements which are equivalent to those laid down in this Regulation;*
- b. effective supervision of trade repositories and effective enforcement of their obligations takes place in that third country on an ongoing basis;*
- c. guarantees of professional secrecy exist, including the protection of business secrets shared with third parties by the authorities, and those guarantees are at least equivalent to those laid down in this Regulation; and*
- d. trade repositories authorised in that third country are subject to a legally binding and enforceable obligation to give direct and immediate access to the data to the entities referred to in Article 12(2).*

The implementing act referred to in the first subparagraph shall also specify the relevant third-country authorities that are entitled to access the data on SFTs held in trade repositories established in the Union.

527. Under Article 19(2) SFTR, “where trade repositories authorised in a third country are not subject to a legally binding and enforceable obligation under the law of that third country to give direct and immediate access to the data to the entities referred to in Article 12(2), the Commission shall submit recommendations to the Council for the negotiation of international agreements with that third country regarding mutual access to, and exchange of, information on SFTs held in trade repositories which are established in that third country, in order to ensure that all of the entities referred to in Article 12(2) have direct and immediate access to all of the information needed for the exercise of their duties”. Hence, there would be still a possibility for third country authorities to access data, even if they do not fulfil the criteria set out in Article 19(1) SFTR
528. As further provided in Article 20 SFTR, ESMA may conclude cooperation arrangements with relevant authorities of third countries to allow them fulfil their respective responsibilities and mandates and exchange data made available to ESMA by EU TRs, provided that certain safeguards are in place.
529. For the purposes of the SFTR RTS on access levels, ESMA proposed in the Consultation Paper that a trade repository provides access to the data, taking account the third country authority’s mandate and responsibilities and in line with the provisions of the relevant implementing act under Article 19(1) or international agreement under Article 19(2).

## **6.3 Definition of access levels under SFTR and EMIR for authorities not included originally in EMIR**

### **6.3.1 EBA and EIOPA**

530. Under Article 1(5) of Regulation (EU) No 1093/2010 (EBA Regulation)<sup>56</sup> and under Article 1(6) of Regulation (EU) 1094/2010 (EIOPA Regulation)<sup>57</sup>, both EBA and EIOPA are required to contribute to a) improving the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision; (b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets; (c) strengthening international supervisory coordination; (d) preventing regulatory arbitrage and promoting equal conditions of competition; (e) ensuring the

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<sup>56</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>57</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

taking of credit and other risks are appropriately regulated and supervised; and (f) enhancing customer protection.

531. In addition, same as ESMA, both authorities “shall pay particular attention to any potential systemic risk posed by financial institutions, the failure of which may impair the operation of the financial system or the real economy”.
532. In summary, EBA and EIOPA have functions similar to those of ESMA, except for the supervision of TRs, which are exclusive to ESMA. Therefore ESMA proposed in the consultation paper that the level of access to TR data should be the same as for ESMA staff and ESRB staff working on similar issues, i.e. transaction level access to all the data reported to the registered TRs by entities having reporting obligation under SFTR, as well as under EMIR.

### 6.3.2 Prudential authorities and sectorial authorities

533. Further to the rest of authorities included by SFTR, the competent authorities for the prudential supervision of all the entities, financial and non-financial counterparties, with reporting obligations under SFTR have also been explicitly referred as having direct and immediate access to data reported to the TRs.
534. Based on EMIR experience, in many cases all the authorities from a given Member State were granted access to TR data under some of the already existing provisions in EMIR, however, in some particular instances, in those Member States where there is no dual supervisors model, the direct and immediate access to EMIR data of the prudential supervisors was not spelled out. This was mainly the case for the insurance and pension schemes supervisors in those Member States where they were not part of the national central bank or the conduct supervisor or where the supervisory framework envisaged the existence of a separate prudential or sectorial supervisor.
535. This issue has been acknowledged by the co-legislators for the purposes of EMIR and SFTR and the prudential / sectorial supervisors have been granted direct and immediate access to the data reported to TRs. The relevant access levels are detailed in the following sub-sections 6.3.2.3 to 6.3.2.6.
536. Consistently with Section 6.1.2.2, prudential and sectorial authorities should have access to all transactions concluded by counterparties under their supervision.



### 6.3.2.1 Single Supervisory Mechanism

537. Under SSMR, a single supervisory mechanism (SSM, hereinafter) composed by the ECB and national competent authorities of the Member States is established to underpin the banking union and to ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in all participating Member States concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. In this respect supervisory tasks which are crucial to ensure a coherent and effective implementation of the Union's policy relating to the prudential supervision of credit institutions are conferred on the ECB, while national authorities have to support the ECB in performing such tasks and remain in charge of the supervision of investment firms.

### 6.3.2.2 ECB-SSM

538. In particular, under Article 4(1) SSMR, ECB-SSM has supervisory powers over all credit institutions in participating Member States – irrespective of whether these are significant or less significant. NCAs in accordance with the distribution of responsibilities set out in Article 6 SSMR are entrusted with the direct supervision of less significant institutions, but this does not mean the ECB-SSM cannot exercise powers vis-à-vis those institutions. In particular, Article 6(5) SSMR sets out that: 'the ECB shall exercise oversight over the functioning of the system, based on the responsibilities and procedures set out in this Article; and the ECB may at any time make use of the powers referred to in Articles 10 to 13' (the latter are investigatory powers, including requests for information, general investigations, on-site inspections, etc.).

539. Moreover, viewed in the context of the ECB-SSM's powers to 'be responsible for the effective and consistent functioning of the SSM' (Article 6(1) SSMR) and its powers 'at any time, on its own initiative [...] decide to exercise directly itself all the relevant powers for one or more [less significant] credit institutions' (Article 6(5) SSMR) it is clear that the ECB would be entitled to access data on these less-significant institutions collected in the context of the SFTR and EMIR. Therefore, in order to allow ECB to carry out its tasks within a single supervisory mechanism, ESMA proposed in the consultation paper that ECB-SSM has access all the transaction data related to the supervision of all entities covered by the SSMR i.e. significant and less significant credit institutions, credit institutions of groups for which the ECB-SSM is consolidating supervisor, hence include



also data on the subsidiaries. ESMA is therefore keeping this access level in this final report.

540. Pursuant to Article 4(2) SSMR, ECB in carrying out its tasks within a SSM is entrusted with certain supervisory powers towards branches established and operating in participating Member States of institutions established in non-participating Member States. It is worth noting however that ECB–SSM has no mandate over branches of third country entities in the EU both participating and not participating Member States.

#### 6.3.2.3 Prudential authorities under CRD IV<sup>58</sup> and CRR<sup>59</sup> participating in SSM

541. As mentioned in section 6.3.2, under SSMR a single supervisory mechanism composed by the ECB and national competent authorities of the Member States is established to underpin the banking union and to ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in all participating Member States concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. Furthermore, ECB has exclusive supervisory powers over all credit institutions in participating Member States – irrespective of whether these are significant or less significant. However, the national competent authorities for prudential supervision continue participating in the supervision at national level of the entities that are included in the scope of SSM. Therefore, ESMA proposed in the CP and respondents agreed that these authorities should have access to the trades reported by relevant counterparties established in their Member State and to all the SFTs reported by the branches of these entities in the Union or in third countries. This stems also from the framework included in Regulation (EU) No 468/2014 of ECB<sup>60</sup>.

542. Furthermore, from the perspective of supervision of branches, the national prudential authorities participating in the SSM would have exclusive powers over third country branches operating in their Member State. Taking into account the framework under Articles 40-46 CRD, the supervision of branches in participating Member State of entities

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<sup>58</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>59</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>60</sup> REGULATION (EU) No 468/2014 OF THE EUROPEAN CENTRAL BANK of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation), OJ L141, 14.5.2014, p.1

established in non-participating Member State is entrusted to the home prudential authorities.

543. Following the above considerations and the feedback received, ESMA has included in the draft RTS provisions that the prudential authorities participating in the SSM should have access to all the derivatives reported by the entities under their respective supervisory responsibilities and mandates, as well as the subsidiaries of those, in case the authority is consolidating supervisor. Under SFTR the prudential authorities participating in the SSM should have access also to all the SFTs reported by the branches of their supervised entities in the Union or in third countries and by branches of third country entities operating within the relevant Member States.

#### 6.3.2.4 Prudential authorities under CRD IV and CRR not participating in the SSM

544. Further to the prudential authorities participating in the SSM, the access to data of those prudential authorities not participating in the SSM has to be defined. The supervisory responsibilities are mainly derived from the CRD IV and CRR, given that the focus of SSMR is the functioning of the SSM. For the sake of clarity, the prudential authorities of the Member States whose currency is not the euro or have no special agreement to form part of the SSM, are deemed to be prudential authorities not participating in the SSM.

545. In the particular cases of branches, the prudential authorities of the non-participating Member State are entitled with the access to data reported by all branches operating in the relevant non-participating Member State.

546. Following the above considerations and the feedback received, ESMA has included in the draft RTS provisions that the prudential authorities non-participating in the SSM should have access to all the derivatives reported by the entities under their respective supervisory responsibilities and mandates, as well as the subsidiaries of those, in case the authority is consolidating supervisor. Under SFTR the prudential authorities non-participating in the SSM should have access also to all the SFTs reported by the branches of their supervised entities in the Union or in third countries and by branches of third country entities operating within the relevant non-participating Member States.

#### 6.3.2.5 Insurance Authorities

547. The supervisory authorities under Solvency II are granted direct access to the EMIR and SFTR data reported to TRs. The responsibilities and mandates of these authorities are

detailed in Solvency II and refer to the supervision of life and non-life insurance and reinsurance groups.

548. The supervisory mandate towards branches is slightly different from the one for national prudential authorities. The host authority has supervisory responsibilities only for significant branches. Those are defined and published by EIOPA together with the relevant groups and the definition of group supervisor<sup>61</sup>. While ESMA understands that this information should allow the TRs to filter the data reported under SFTR by the significant branches and provided it also to the host supervisor, some respondents pointed out that it will be critical that the data published by EIOPA is kept up to date to ensure that the access rights are correctly established and up to date. Under EMIR, given the lack of branch identification, only transaction data on the supervised entities and at group level, subject to availability of LEI relationship data could be provided.
549. Stemming from the above and taking into account the feedback received, the insurance authorities should have access to all the derivatives reported by the entities under their respective supervisory responsibilities and mandates, as well as the subsidiaries of those, in case the authority is consolidating supervisor. Under SFTR the insurance authorities should have access also to all the SFTs reported by the branches of these entities in the Union or in third countries or by significant branches of entities of other Member States and by branches of third country entities operating within the relevant Member States.

#### 6.3.2.6 UCITS and AIF authorities

550. The supervisory regime under UCITS and AIFMD establishes supervisory responsibilities for both the home and the host competent authority in the case of branches of the management companies and in the case of the UCITS and AIF commercialised cross-border in the EU. Therefore, ESMA understands that both competent authorities should be entitled with access to transaction data of branches, together with the relevant access to data of counterparties established in their Member State.
551. The access to data of branches under EMIR is not possible, as there is no specific reporting requirement established for branches. Hence access to data should be kept to the relevant entities authorised under UCITS and AIFMD.

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<sup>61</sup> [https://eiopa.europa.eu/Publications/Administrative/List%20of%20groups%202015\\_Final\\_29012016.pdf](https://eiopa.europa.eu/Publications/Administrative/List%20of%20groups%202015_Final_29012016.pdf)

552. Therefore, stemming from the above and taking into account the feedback received, the authorities competent for UCITS and AIFs should have access to all the derivatives reported by the entities (UCITS, AIFs, or their management companies) under their respective supervisory responsibilities and mandates. Under SFTR the authorities competent for UCITS and AIFs should have access also to all the SFTs reported by the branches of these entities in the Union or in third countries and by branches of third country entities operating within the relevant Member States.

#### 6.3.2.7 Occupational Pensions authorities

553. The amendment of Article 81(3) of EMIR includes reference also to the authorities competent for the supervision of institutions providing occupational pensions. In the CP ESMA proposed and respondents agreed that the access to data is generally for the home authority, however in case there is cross-border provision of services, under Article 20(9) of Pensions directive, the relevant institution shall be subject to ongoing supervision by the competent authorities of the host Member State as to the compliance of its activities with the host Member State's requirements of labour and social law relevant to the field of occupational pension schemes referred to in paragraph 452 and with the information requirements referred to in paragraph 454. Should this supervision bring irregularities to light, the competent authorities of the host Member State shall inform the competent authorities of the home Member State immediately. The competent authorities of the home Member State shall, in coordination with the competent authorities of the host Member State, take the necessary measures to ensure that the institution puts a stop to the detected breach of social and labour law.

554. In order to allow both authorities to fulfil their mandate, ESMA proposes that in such situation, both authorities have access to the details of derivatives or SFTs reported by the relevant institution.

555. Stemming from the above and taking into account the feedback received, the authorities competent for occupational pensions should have access to all the derivatives reported by the entities under their respective supervisory responsibilities and mandates. Under SFTR, where applicable, the authorities competent for occupational pensions should have access also to all the SFTs reported by the branches of these entities in the Union or in third countries and by branches of third country entities operating within the relevant Member States.

### 6.3.3 National Resolution Authorities and Single Resolution Board

556. The crisis has demonstrated that the insolvency of an entity affiliated to a group can rapidly impact the solvency of the whole group and, thus, even have its own systemic implications. Authorities should therefore possess effective means of action with respect to those entities in order to prevent contagion, in particular by preparing resolution plans, and by having effective resolution tools and powers in case the entity is determined to be “failing or likely to fail”. Furthermore, in order to deal in an efficient manner with failing institutions, authorities should have the power to impose preparatory and preventative measures.
557. In order to ensure consistency with existing Union legislation in the area of financial services as well as the greatest possible level of financial stability across the spectrum of institutions, the resolution regime established by BRRD applies to institutions subject to the prudential requirements laid down in CRR and CRD IV. The regime also applies to financial holding companies, mixed financial holding companies provided for in Directive 2002/87/EC (FICOD)<sup>62</sup>, mixed-activity holding companies and financial institutions, when the latter are subsidiaries of an institution or of a financial holding company, a mixed financial holding company or a mixed-activity holding company and are covered by the supervision of the parent undertaking on a consolidated basis.
558. Furthermore, SRMR established the Single Resolution Mechanism (SRM) and conferred powers to the Single Resolution Board (SRB) to be responsible for the effective and consistent functioning of the SRM. The framework is similar to the one of the single supervisory mechanism and the SRB is responsible for drawing up the resolution plans for the entities subject to ECB’s supervision or for which ECB is the consolidating supervisor, as well as for cross-border groups, while the national resolution authorities, designated under Article 3 of Directive 2014/59/EU are responsible for drawing up the individual or group resolution plans for the rest of the institutions for which they designated as resolution authority in the Member State.
559. In this respect, ESMA indicated in the CP that it is important to consider whether the resolution authorities have access to the same level of information as the competent authorities for the entities for which they are responsible to draw up resolution plans (i)

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<sup>62</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

only from the time when the entity is determined to be “failing or likely to fail” in accordance with the BRRD and SRMR, i.e. when they are entrusted with the power to take resolution actions in relation to the institution, or (ii) well in advance, i.e. as soon as an entity is determined to be in the scope of their resolution responsibility. ESMA understands that it is important to consider the following aspects in the analysis:

- a. Under Articles 10-14 BRRD resolution plans are drawn up well before institutions are put under resolution. Derivative and SFT data is critical inputs in the resolution planning phase.
- b. Pursuant to Articles 15-18 BRRD resolution authorities have competences to remove impediments to resolvability – one of those competences is to require institutions to limit their exposures or divest specific activities, etc.
- c. Under Article 44 BRRD derivatives are in the scope of the bail-in tool (i.e. derivatives could be bailed-in in resolution)

560. Resolution plans must include (i) details such as a description of critical interdependencies, (ii) a description of options for preserving access to payments and clearing services and other infrastructures; (iii) a demonstration of how critical functions and core business lines can be legally and economically separated from other functions so as to ensure continuity; (iv) an explanation as to how resolution options can be financed.

561. Obviously, to be able to exercise the aforementioned competences, the resolution authorities need to have access to information on derivatives and SFTs. In order to deal in an efficient manner with failing institutions, authorities should have the power to impose preparatory and preventative measures. Resolution plans are drawn up in advance by the relevant resolution authority for every institution under its responsibility, regardless of the likelihood that it will need to be resolved. Resolution plans must be reviewed and updated at least annually and after any material changes to the legal or organisations structure of the institution.

562. ESMA proposed in the CP and respondents agreed that the national resolution authorities and the SRB have access to transaction data of the entities for which they are competent to draw up resolution plans under the framework described in paragraphs 558 and 559 from the moment in which such designation takes place, i.e. before any actual resolution procedure starts.

563. Stemming from the above considerations and taking into account the feedback to the CP, the national resolution authorities should have access to all derivatives reported by the entities under their respective responsibilities and mandates, as well as the subsidiaries of those, in case the authority is resolution authority for the group. Under SFTR the national resolution authorities should have access to all the SFTs reported by the branches of these entities in the Union or in third countries and by branches of third country entities operating within the relevant Member States.
564. The SRB would have the same access level as ECB-SSM, i.e. access to SFTs reported by any entity established in any of the participating Member States, or the branches of these entities in the Union or in third countries, as well as branches of entities from non-participating Member States in participating Member States. Similarly to ECB-SSM, SRB will not have access to SFTs reported by branches of third country entities operating within the participating Member States.

## **6.4 Terms and conditions for data access under SFTR**

565. With regards to the operational establishment of access to data there is a slight difference between SFTR and EMIR. Under SFTR there is no provision regarding “operational standards for access to data”; however the provisions that cover operational standards for data access under Article 81(5) EMIR are included in Article 12(3)(d) SFTR where ESMA is requested to develop regulatory technical standards specifying “the terms and conditions under which the entities referred to in paragraph 2 are to have direct and immediate access to data held in trade repositories”, but also under the provision in Article 12(3)(b)(ii) SFTR for the operational standards required, to allow the timely, structured and comprehensive aggregation and comparison of data across repositories.
566. There is no specific provision under EMIR with regards to the legal aspects of the data access to individual TRs. Some of the TRs put in place contractual documentation and in certain occasions this led to undue delays or even impossibility of access to data by some authorities who were prohibited from signing legal agreements with any type of supervised entities. The co-legislators included in SFTR a particular provision for ESMA to develop the terms and conditions for access. The terms and conditions include also the procedural arrangements under which the access to data should be organised.
567. Moreover, to address the aforementioned issue, ESMA proposed and respondents agreed to include a specific provision in the draft SFTR RTS on access levels that would



define the precise and exhaustive procedure for granting access to data. The harmonising exercise carried out by a Regulation should ensure that the application of the envisaged provisions avoids divergence across the Union and achieves the same goal throughout. The terms and conditions for data access include a procedure for getting access to the data and technical and operational arrangements to access the data given that the access to data is entrusted by an EU regulation the trade repository should not require any further documentation to the authority besides the templates and tables to establish the relevant access to data.

568. It is important to mention that when ensuring the access to data of the relevant authorities listed under Article 12(2) SFTR, the TR should ensure the confidentiality, protection and integrity of the data reported under Article 4 SFTR.

#### 6.4.1 Terms of access under SFTR

569. The terms of access are detailed in a procedure and they should include the following:

- a. a template registration form for the entities entitled under Article 12(2) SFTR to access SFT data
- b. a table where the relevant aspects of the supervisory responsibilities and mandates, e.g. entities, instruments, etc. will be defined.
- c. a maximum timespan of 30 days needed to establish the direct and immediate access to data
- d. the applicable technical arrangements to access the data in accordance with the RTS.

570. The following aspects should be taken into account when defining the procedure:

- a. The trade repository should designate a person or persons as responsible for relationship with authorities listed under Article 12(2) SFTR
- b. The trade repository should publish on its website the relevant instructions (email, etc.) for submission of tables and templates for data access by authorities
- c. The trade repository should provide the relevant authorities with the relevant templates and tables to be able to assess their access levels. The template is defined in paragraph 572.



- d. The trade repository should revert at the earliest opportunity to the authority.

571. The trade repository should ensure that the authorities are granted access to data that corresponds to their responsibilities and mandates. In case the trade repository cannot reach common understanding with a given authority, the trade repository should consult with the relevant legal services available and, as last resort, might refer the issue at stake to ESMA.

572. The template form to be submitted by an authority should include the following information:

- a. Name of the authority
- b. Contact person
- c. Legal mandate to access TR data – SFTR and the relevant EU or national regulations
- d. List of authorised users
- e. Credentials for secure SSH FTP connection
- f. Other relevant technical information to ensure timely access to data

573. One respondent commented that the requirements related to securities and commodities might be burdensome. Given that the data reported by counterparties would include the jurisdiction of the issuer, ESMA understands that the TRs could use this field to establish the access rights to authorities.

574. The table relating to the responsibilities and mandates to be provided by the authority should include the following information:

- a. Territory, such as e.g. Member State, euro area or EU, for which the authority is competent
- b. Types of counterparties for which the authority is competent
- c. Types of SFTs which are supervised
- d. Issuer of the securities that were borrowed or lent or provided as a collateral issued by an entity established in the Member State, euro area or EU, that is supervised by the relevant authority

- e. Commodities produced or delivered in the Member State, euro area or EU, which were either borrowed or lent or provided as a collateral
- f. Venues of execution that are supervised
- g. CCPs that are supervised or overseen
- h. Currency of issue
- i. Benchmarks used in the Union, for which the authority is competent

#### 6.4.2 Technical arrangements for data access under SFTR

575. Further to the establishment of templates to harmonise the access to data by authorities across the registered TRs, this section of the empowerment is expected also to establish the technical ways in which access to data should be implemented.

576. The operational and technical arrangements for access to data under SFTR leverage on the infrastructure and proposals that are part of the amended RTS on operational standards on data access and aggregation and comparison of data under Article 81(3) EMIR which were submitted by ESMA to the EC on 5 April<sup>63</sup>. In summary, through those standards ESMA proposed to establish:

- a. Secure machine-to-machine connection through SSH File Transfer Protocol, use of data encryption protocols
- b. Standardised and secure data exchange based on ISO standards between TRs and authorities and pre-defined data directory;
- c. Predefined set of queryable fields
- d. Clear timelines/frequency for the provision of direct and immediate access to TR data. The TR should make available the SFT data as soon as possible and no later than 12 o'clock Coordinated Universal Time on the day following its receipt by the TR
- e. Validations of the requests to access data

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<sup>63</sup> [https://www.esma.europa.eu/sites/default/files/library/2016-422\\_final\\_report\\_rts\\_on\\_tr\\_data\\_under\\_art.81\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-422_final_report_rts_on_tr_data_under_art.81_emir.pdf)

#### 6.4.2.1 Secure machine-to-machine connection

577. Under EMIR, most of the TRs are providing access to the data reported to them mainly through Internet-based portals. The practical experience showed that those portals are offering only limited functionalities and are not allowing for extensive data searches or for downloading “huge-size” (more than 100MB of data) files.
578. Access to the internet-based portals proved difficult due to the different system specifications across each TR. Instead of simplifying, such system specifications add another layer of difficulty in accessing TR data. The size limitation issue has been solved, by some TRs, by using SFTP connections where the output data reports produced by the TRs are posted in the folder of the authorities needing access, instead of being posted in an Internet-based portal.
579. In order to ensure consistency with EMIR and to provide for a consistent and secure data transfer between TRs and authorities, ESMA proposed in the CP and respondents did not objected that a secure machine-to-machine interface, the SSH File Transfer Protocol, should be used by TRs. Other alternatives can also be offered to the extent that at a minimum SFTP is offered.
580. In order to better ensure the confidentiality, integrity and protection of the data in line with Article 80(1) EMIR which is cross referred by SFTR, ESMA proposed also that that the TRs should use electronic signature and data encryption protocols, when providing access to or making available the data to the authorities. Furthermore, those signatures and data encryption protocols should be sufficient to maintain the confidentiality, integrity and protection of data, should not impede the timely provision of data to authorities neither should pose any type of barrier to the access to data. No comments were received on this aspect.

#### 6.4.2.2 Data exchange between TRs and authorities

581. ESMA proposed in the CP that an XML template based on ISO 20022 methodology is used to facilitate aggregation and comparison of data across repositories as explained in detail in section 5.4. In order to allow automatic treatment by authorities, similar to the proposal under Article 81 of EMIR the communications between the TRs and the authorities should also be supported by messages based on ISO compliant methodology.

582. The use of ISO 20022 will ensure the correct and harmonised handling of the communications between the TRs and the authorities. ESMA and the rest of authorities will benefit from the development and registration process established by ISO with regards to the adoption of these messages as the usage of business concepts from the ISO 20022 standard will allow ESMA to apply consistent definitions and to automate processing of the received data. This will facilitate the collection of data at a daily frequency and processing the data in a timely manner. Additionally, the usage of standards is likely to improve data quality and ensure global semantic interoperability with all other ISO 20022 based systems. This standardisation is expected to significantly reduce the long-term costs for data communication for both TRs and authorities. The detailed schema and the solutions for different problems raised in the responses will be developed as per the ISO 20022 message development and registration process, which is an additional benefit of using ISO methodology.
583. Furthermore, ESMA understands that in terms of practical implementation, relevant directories and folders would be defined between the authorities and the TRs for the data exchange. No further comments were received on this proposal, hence it is retained.

#### 6.4.2.3 Query functionalities

584. A further important issue that needs to be addressed is the standardisation or at least harmonisation of the query functionalities to be put in place by the TRs. Similar to EMIR, ESMA proposed in the CP two types of query functionalities – those referring to recurrent or predefined data searches or retrievals of information based on identical criteria and those referring to ad-hoc searches which offer the authorities the possibility to have more tailor made data available from TRs. The respondents to the CP didn't objected those, hence they are retained. Both query types serve different purposes and both are considered complementary in their implementation and use.
585. The recurrent query function provides the competent authorities with access to the full data set reported in the relevant reference period established. Those predefined reports should contain information, at least, on all the daily submissions processed by the TRs and the most updated state of the trades with open interest (i.e. not terminated by the counterparties).
586. The different mandates of the competent authorities require the need to allow them to be able to query the data corresponding to the access level of that authority based on certain search criteria. The ad-hoc query provides one-off access to a dataset, selected by the

competent authority, which is mainly used to perform targeted investigations. ESMA proposed in the CP and respondents agreed that TRs support ad-hoc queries based on any combination of the following fields:

- a. Fields related to the parties, such as Reporting Counterparty, Other Counterparty, Branch of the reporting counterparty, Branch of the other counterparty, Broker, Report submitting entity, Beneficiary, and CCP. This ad-hoc query will allow the authorities to gain insight on the SFTs concluded, reported or cleared by any of those parties and it will be particularly important for investigations regarding risks to financial stability, interconnectedness and market abuse, but also when there is a particular market or credit event with regards to a particular entity.
- b. Fields related to characteristics of the Reporting Counterparty, such as Sector of the reporting counterparty and Nature of the reporting counterparty. This ad-hoc query will allow gaining information on the SFT activities of particular types of entities for supervisory purposes, such as financial intermediaries, funds, etc.
- c. Fields related to the characteristics of the product or the venue where the contract was concluded, such as Type of SFT, Type of collateral component, Venue of execution. This type of ad-hoc query will allow the authorities to easily obtain data regarding the different types of products traded, the particular underlying assets or currencies traded or the specific venues where the derivatives trades were concluded. This will enable the authorities to have better information on particular instruments in case of market events or to monitor specific spikes in the activity in certain products or venues.
- d. Fields related to dates and time of an SFT, including the Reporting timestamp, the Execution timestamp, the Maturity date, and the Termination date. This ad-hoc query will allow the authorities to define specific time criteria for their queries and restrict the set of data obtained for a specific period.
- e. Fields related to the life-cycle events such as Action type. This ad-hoc query will enable authorities to filter the data based on the action types and will allow them to determine the types of submissions and lifecycle

events relevant for the performance of their supervisory duties and to monitor whether the counterparties are populating those fields correctly.

#### 6.4.2.4 Frequency of data access

587. The frequency and timeliness of access to data has also been one aspect related to the lack of harmonisation of the data access and the aggregation and comparison of data. SFTR clearly refers to the provision of “direct and immediate access to the data reported to the TRs”. In the CP ESMA proposed to align the provision of frequency and timeliness of the data access with EMIR. This proposal was not objected by the respondents to the CP, hence ESMA retains it.

588. Based on this, where the data request refers to the daily submissions made by the counterparties to the TRs as well as to the transaction data regarding outstanding SFTs which have matured or for which submissions with action types “E”, “C” or “P”, were made within the last year, the relevant output report should be provided by 12am UTC on the day following the one on which the specific request to access is submitted. All the reports produced by recurrent queries will be delivered by that deadline.

589. This timeline will allow the authorities to have timely access to the outstanding trades and the recent data reported to the TRs and will allow them be in a position to quickly react to market events. Furthermore and in line with the amendments proposed to the operational standards on data access under EMIR, in the case of transaction data regarding SFTs which have matured or for which submissions with action types “E”, “C” or “P”, were made more than one year before the date on which the request was submitted, the authorities should be provided with access no later than three working days after the specific request to access is submitted to the TR. Given that TRs might use different recordkeeping procedures for this type of data and the authorities might not directly need this type of data for the assessment of current market events or exposures of entities, the timeline for the provision is significantly greater although sufficient to allow the authorities to have direct and immediate access.

590. Some of the respondents had some doubts regarding the relevant reference date for the provision of data access by 12:00 UTC. In this respect, ESMA expects that by 12:00 UTC on T+2<sup>64</sup>, the TRs provide access to the reports resulting from the relevant ad-hoc

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<sup>64</sup> Providing access on T+2 is essentially the same as providing access to data on the day following the receipt of the information by the TR.

queries, defined in paragraph 587, even if those were requested on T+1. No specific changes need to be made on the proposal. For the avoidance of doubts, in case the reporting timestamp for the last reporting date to be included in the query is not provided by the authority, it will be understood that it is the day on which the query is submitted or in case the query is submitted on a non-working day, it will be considered as referring to the immediately preceding working day in accordance with the TARGET calendar. In the case of recurrent queries, the output report should be provided by 12:00 UTC on each working day in accordance with the TARGET calendar.

#### 6.4.2.5 Validation of data requests

591. Similar to the feedback to counterparties which is detailed in section 5.1.3.1, the proposals to the operational arrangements on data access also establish the requirement to validate each request for access to data and to provide standardised feedback in a timely manner. ESMA proposed and the respondents did not object that the TR should send a feedback message to that authority no later than 60 minutes after the submission of the request by the authority. This timeline is expected to allow the authority to quickly react and to amend the criteria included in the query.

## 7 ITS on data exchange between authorities

592. Article 25(4) SFTR requires ESMA to develop ITS concerning the procedures and forms for the annual exchange of information regarding administrative sanctions and measures and criminal sanctions under Article 25(1) and (2) SFTR.

593. Regarding the information to be exchanged, Article 25(1) and (2) SFTR respectively state:

1. Competent authorities shall provide ESMA annually with aggregated and granular information regarding all administrative sanctions and other administrative measures imposed by them in accordance with Article 22. ESMA shall publish aggregated information in an annual report.

2. Where Member States have chosen to lay down criminal sanctions for infringements of the provisions referred to in Article 22, their competent authorities shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal sanctions imposed. ESMA shall publish, in an annual report, data on criminal sanctions imposed.'

594. With a view to including meaningful information in the annual reports on sanctions, measures and investigations to be published by ESMA under Article 25(1) and (2) SFTR, competent authorities should report the information by using specific forms clearly indicating which provisions of the SFTR were infringed.
595. In order to limit their reporting burden, competent authorities should provide ESMA with the granular information referred to in Article 25(1) SFTR by referring clearly in the specific form to each administrative sanction or administrative measure previously reported to ESMA. In the absence of a previous report, a competent authority should provide a copy of the decision imposing the sanction or measure and/or a clear summary of the essential elements of the decision.
596. ESMA did not conduct open public consultations on the draft ITS, as this would have been disproportionate in relation to their scope and impact, taking into account that the addressees of the ITS would be NCAs only and not market participants.



## 8 Annex I – Legislative mandate

### Legislative mandate to develop technical standards

Article 4(9) SFTR establishes that *“In order to ensure consistent application of this Article and in order to ensure consistency with the reporting made under Article 9 of Regulation (EU) No 648/2012 and internationally agreed standards, ESMA shall, in close cooperation with, and taking into account the needs of, the ESCB, develop draft regulatory technical standards specifying the details of the reports referred to in paragraphs 1 and 5 of this Article for the different types of SFTs that shall include at least:*

- a. The parties to the SFT and, where different, the beneficiary of the rights and obligations arising therefrom;*
- b. The principal amount; the currency; the assets used as collateral and their type, quality, and value; the method used to provide collateral; whether collateral is available for reuse; in cases where the collateral is distinguishable from other assets, whether it has been reused; any substitution of the collateral; the repurchase rate, lending fee or margin lending rate; any haircut; the value date; the maturity date; the first callable date; and the market segment;*
- c. Depending on the SFT, details of the following:*
  - (i) cash collateral reinvestment;*
  - (ii) securities or commodities being lent or borrowed.*

*In developing those draft technical standards, ESMA shall take into account the technical specificities of pools of assets and shall provide for the possibility of reporting position level collateral data where appropriate.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 13 January 2017.*

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”*

Article 4(10) SFTR provides that *“In order to ensure uniform conditions of application of paragraph 1 of this Article and, to the extent feasible, consistency with the reporting pursuant to Article 9 of Regulation (EU) No 648/2012 and harmonisation of formats between trade repositories, ESMA shall, in close cooperation with, and taking into account the needs of, the ESCB, develop draft implementing technical standards specifying the format and frequency of the reports referred to in paragraphs 1 and 5 of this Article for the different types of SFTs.*

*The format shall include, in particular:*

- a. Global legal entity identifiers (LEIs), or pre-LEIs until the global legal entity identifier system is fully implemented;*
- b. International securities identification numbers (ISINs); and*
- c. Unique trade identifiers.*

*In developing those draft technical standards, ESMA shall take into account international developments and standards agreed at Union or global level.*

*ESMA shall submit those draft implementing technical standards to the Commission by 13 January 2017.*

*Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.*

Article 5(7) SFTR establishes that “*In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of all of the following:*

- a. The procedures referred to in paragraph 2 of this Article and which are to be applied by trade repositories in order to verify the completeness and correctness of the details reported to them under Article 4(1);*
- b. The application for registration referred to in point (a) of paragraph 5;*
- c. A simplified application for an extension of registration referred to in point (b) of paragraph 5 in order to avoid duplicate requirements.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 13 January 2017.*

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*

Article 5(8) SFTR provides that “*In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA shall develop draft implementing technical standards specifying the format of both of the following:*

- a. The application for registration referred to in point (a) of paragraph 5;*
- b. The application for an extension of registration referred to in point (b) of paragraph 5.*

*With regard to point (b) of the first subparagraph, ESMA shall develop a simplified format to avoid duplicate procedures.*

*ESMA shall submit those draft implementing technical standards to the Commission by 13 January 2017.*

*Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.”*

Article 12(3) SFTR establishes that “*In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and taking into account the needs of the entities referred to in paragraph 2, develop draft regulatory technical standards specifying:*

- a. The frequency and the details of the aggregate positions referred to in paragraph 1 and the details of SFTs referred to in paragraph 2;*
- b. The operational standards required, to allow the timely, structured and comprehensive:*
  - (i) collection of data by trade repositories;*
  - (ii) aggregation and comparison of data across repositories;*
- c. The details of the information to which the entities referred to in paragraph 2 are to have access, taking into account their mandate and their specific needs;*
- d. The terms and conditions under which the entities referred to in paragraph 2 are to have direct and immediate access to data held in trade repositories.*

*Those draft regulatory technical standards shall ensure that the information published under paragraph 1 does not enable the identification of a party to any SFT.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 13 January 2017.*

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.”*

## **9 Annex II - Opinion of Securities and Markets Stakeholder Group**

In accordance with Article 10 of Regulation (EU) No 1095/2010 ESMA requested the opinion of the ESMA Securities and Markets Stakeholder Group. The MSG decided not to provide an opinion.

## **10 Annex III – Draft RTS on registration and extension of registration of TRs under SFTR**

**COMMISSION DELEGATED REGULATION (EU) No .../...**

**of [ ]**

**supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration as a trade repository**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank,

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012<sup>65</sup>, and in particular Article 5(7) thereof,

Whereas:

- (1) Rules should be laid down specifying the information to be provided to the European Securities and Markets Authority (ESMA) as part of an application for registration or extension of registration as a trade repository.
- (2) Establishing a comprehensive and sound framework for registration and extension of registration of trade repositories is essential for the achievement of the objectives of Regulation (EU) 2015/2365 and for the adequate functioning of the provision of repository functions.
- (3) The rules and standards for the registration and the extension of registration of trade repositories for the purposes of Regulation (EU) No 2365/2015 build on pre-existing infrastructures, operational processes and formats which were introduced with regard to reporting derivative contracts to trade repositories in order to minimise additional operational costs for market participants.
- (4) Experience in the application of Commission Delegated Regulation (EU) No 150/2013 of the European Parliament and of the Council on OTC derivatives, central counterparties

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<sup>65</sup> OJ L 337, 23.12.2015, p. 1.

and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository<sup>66</sup> has proved that the provisions for registration of trade repositories under Regulation (EU) No 648/2012 constitute a sound basis to build the framework for registration of trade repositories under Regulation (EU) 2015/2365. The evolving nature of the industry however requires certain amendments to be undertaken in order to further strengthen this framework.

- (5) Any person applying for registration as a trade repository should provide information on the structure of its internal controls and the independence of its governing bodies, in order to enable ESMA to assess whether the corporate governance structure ensures the independence of the trade repository and whether that structure and its reporting routines are adequate. Including in the application for registration detailed information on the relevant internal control mechanisms and structures, the internal audit function as well as the audit work plan enables ESMA to assess whether these factors contribute to ensuring the efficient functioning of the trade repository.
- (6) Although when a trade repository operates through branches, these are not separate legal persons, separate information on branches should be provided in order to enable ESMA to clearly identify the position of the branches in the organisational structure of the trade repository, assess the fitness for duty and appropriateness of the senior management of the branches, and evaluate whether the control mechanisms, compliance and other functions in place are considered to be robust and enough to identify, evaluate and manage the branches' risks in an appropriate manner.
- (7) For the purpose of enabling ESMA to assess the good repute, as well as the experience and skills of the prospective trade repository's board and senior management, an applicant trade repository should provide the relevant information to perform such an assessment.
- (8) The applicant trade repository should provide information to ESMA to demonstrate that it has the necessary financial resources at its disposal for the performance of its functions on an on-going basis and adequate business continuity arrangements.
- (9) Regulation (EU) 2015/2365 specifies particular requirements on trade repositories to verify the completeness and correctness of data reported under Article 4 thereof. Although this function of trade repositories is of primary importance for the achievement of the objectives of transparency, it was not explicitly required at the level of an EU Regulation. To be registered or for the extension of registration under Regulation (EU) 2015/2365, the trade repositories should demonstrate that they have the adequate systems and procedures in place to ensure that they are able to verify the completeness and correctness of the details of the SFTs.
- (10) The provision of ancillary or non-SFT specific services introduces additional risks in the functioning of a trade repository. It is important therefore for an applicant to provide ESMA with information on ancillary services, or other business lines that the trade repository offers outside its core activity of repository services under Regulation

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<sup>66</sup> OJ L 52, 23.2.2013, p. 25.

2015/2365. To ensure that risk of contagion between different services is effectively addressed, the trade repositories should establish an adequate level of operational separation with regards to resources, systems and procedures between the different business lines, including where those business lines comprise the provision of services under EU or third country legislation. Where common systems or resources might not introduce operational risks to the functioning of the trade repository or the trade repository can demonstrate that those are addressed accordingly, such as the use of common front-end of the systems, common authorities' access point to data or the use of the same staff working in sales, compliance, clients' services helpdesk, there could be no need for the trade repository to duplicate resources. In those other situations, such as the validation, the reconciliation or the recordkeeping of data, where the different structure of the processes and applications would require separation, such separation should be effectively established by the TRs.

- (11) The soundness, resilience and protection of the information technology systems of the trade repositories are essential to ensure compliance with the objectives of Regulation (EU) 2015/2365. To allow ESMA to assess the soundness and resilience of their information technology systems, the trade repositories should provide comprehensive and detailed information. Where the provision of some or all of the repository functions is linked with outsourcing to third parties, either at the level of the group or outside the group, to allow the assessment of the conditions for registration, the trade repository should provide a detailed information on the relevant outsourcing arrangements in particular the service level agreements, the metrics and how those are effectively monitored. Finally, given the relevance of cyber-risks and cyber-attacks and in order to demonstrate that those are correctly managed, the trade repositories should put in place all necessary mechanisms and controls to protect data from cyber-attacks.
- (12) The fees associated with the services provided by trade repositories are important information for enabling market participants to make an informed choice and should therefore form part of the application for registration as trade repository.
- (13) Given that market participants and authorities rely on the data maintained by trade repositories, strict operational and record-keeping requirements should be clearly distinguishable in a trade repository's application for registration.
- (14) In order to secure full access to the trade repository, third party service providers are granted non-discriminatory access to information maintained by the trade repository, on the condition that the entity providing the data and the relevant counterparties have provided their consent. An applicant trade repository should therefore provide ESMA with information about its access policies and procedures.
- (15) To achieve the objectives of Regulation (EU) 2015/2365 for transparency of the SFTs and of the reuse, the trade repositories should demonstrate that they follow the procedure for terms and conditions of access established under section 9, that the integrity of the data provided to authorities is ensured and that they are in a position to provide access to the data in accordance with the relevant requirements included in [insert reference to RTS under Article 12(3) (b(ii))].

- (16) By making available aggregate position data to the public in accordance with the applicable requirements, trade repositories fully accomplish their key function of making data available to the public.
- (17) The payment of registration fees by trade repositories is essential to cover the ESMA's necessary expenditure relating to the registration or extension of registration of the trade repository as well as the reimbursement of any costs that the competent authorities may incur as a result of any delegation of tasks pursuant to Article 9(1) of Regulation (EU) 2015/2365.
- (18) This Regulation provides a simplified application for an extension of registration to allow the trade repositories already registered under Regulation (EU) No 648/2012 to file a simplified application in order for their registration to be extended under Regulation (EU) 2015/2365. Therefore, to avoid any duplicate requirements in the case of an application for an extension of registration, the information to be provided by the trade repository as part of an extension of registration should refer specifically to the updates necessary to bring it in compliance with the requirements under Regulation (EU) 2015/2365.
- (19) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (20) In accordance with Article 10 of Regulation (EU) No 1095/2010<sup>67</sup>, ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

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<sup>67</sup> OJ L 331, 15.12.2010, p. 84.



HAS ADOPTED THIS REGULATION

#### Article 1

#### **Identification, legal status and types of securities financing transactions**

1. An application for registration as a trade repository shall identify the applicant and the activities it intends to carry out which require it to be registered as a trade repository.
2. The application for registration as a trade repository shall in particular contain the following information:
  - a. the corporate name of the applicant and legal address within the Union;
  - b. an excerpt from the relevant commercial or court register, or other forms of certified evidence of the place of incorporation and scope of business activity of the applicant, valid at the application date;
  - c. information on the types of securities financing transactions for which the applicant wishes to be registered;
  - d. information on whether the applicant is authorised or registered by a competent authority in the Member State where it is established, and in such case, the name of the authority and any reference number related to the authorisation or registration;
  - e. the articles of incorporation and, where relevant, other statutory documentation stating that the applicant is to conduct trade repository services;
  - f. the minutes from the meeting where the applicant's board approved the application;
  - g. the name and contact details of the person(s) responsible for compliance, or any other staff involved in compliance assessments for the applicant;
  - h. the programme of operations, including indications of the location of the main business activities;
  - i. the identification of any subsidiaries and, where relevant, the group structure;

- j. any service, other than the trade repository function, that the applicant provides or intends to provide;
  - k. any information on any pending judicial, administrative, arbitration or any other litigation proceedings irrespective of their type, that the applicant may be party to, particularly as regards tax and insolvency matters and where significant financial or reputational costs may be incurred, or any non- pending proceedings, that may still have any material impact on trade repository costs.
3. Upon request by ESMA, the applicants shall also send to it additional information during the examination of the application for registration where such information is needed for the assessment of the applicants' capacity to comply with the requirements set out in Chapter III of Regulation (EU) 2015/2365 and for ESMA to duly interpret and analyse the documentation to be submitted or already submitted.
4. Where an applicant considers that a requirement of this Regulation is not applicable to it, it shall clearly indicate that requirement in its application and also provide an explanation why such requirement does not apply.

## Article 2

### **Policies and procedures**

Where information regarding policies and procedures is provided as part of an application, an applicant shall ensure that the application includes the following items:

- a. an indication that the Board approves the policies, that the senior management approves the procedures and that the senior management is responsible for the implementation and maintenance of the policies and procedures;
- b. a description of how the communication of policies and procedures within the applicant is organised, how compliance with the policies will be ensured and monitored on a day to day basis, and the person or persons responsible for compliance in that regard;
- c. any records indicating that employed and dedicated staff are aware of the policies and procedures;

- d. a description of the measures to adopt in the event of a breach of policies and procedures;
- e. an indication of the procedure for reporting to ESMA any material breach of policies or procedures which may result in a breach of the conditions for initial registration.

### Article 3

#### **Ownership of the trade repository**

1. An application for registration as a trade repository shall contain:
  - a. a list containing the name of each person or entity who directly or indirectly holds 5 % or more of the applicant's capital or of its voting rights or whose holding makes it possible to exercise a significant influence over the applicant's management;
  - b. a list of any undertakings in which a person referred to in point (a) holds 5 % or more of the capital or voting rights or over whose management they exercise a significant influence.
2. Where the applicant has a parent undertaking, it shall:
  - a. identify the legal address of the parent undertaking;
  - b. indicate whether the parent undertaking is authorised or registered and subject to supervision, and when this is the case, state any reference number and the name of the responsible supervisory authority.

### Article 4

#### **Ownership chart**

1. An application for registration as a trade repository shall contain a chart showing the ownership links between the parent undertaking, subsidiaries and any other associated entities or branches.
2. The undertakings shown in the chart referred to in paragraph 1 shall be identified by their full name, legal status and legal address.

## Article 5

### **Organisational chart**

1. An application for registration as a trade repository shall contain the organisational chart detailing the organisational structure of the applicant, including that of any ancillary services.
2. That chart shall include information about the identity of the person responsible for each significant role, including senior management and persons who direct the activities of any branches.

## Article 6

### **Corporate governance**

1. An application for registration as a trade repository shall contain information regarding the applicant's internal corporate governance policies and the procedures and terms of reference which govern its senior management, including the board, its non-executive members and, where established, committees.
2. That information shall include a description of the selection process, appointment, performance evaluation and removal of senior management and members of the board.
3. Where the applicant adheres to a recognised corporate governance code of conduct, the application for registration as a trade repository shall identify the code and provide an explanation for any situations where the applicant deviates from the code.

## Article 7

### **Internal control**

1. An application for registration as a trade repository shall contain a detailed information relating to the internal control system of the applicant. This shall include information regarding its compliance function, risk assessment, internal control mechanisms and arrangements of its internal audit function.
2. That detailed information shall include:
  - a. the applicant's internal control policies and respective procedures related to their consistent and appropriate implementation;

- b. any policies, procedures and manuals regarding the monitoring and evaluation of the adequacy and effectiveness of the applicant's systems;
  - c. any policies, procedures and manuals regarding the control and safeguard for the applicant's information processing systems;
  - d. the identity of the internal bodies in charge of the evaluation of the relevant internal control findings.
- 3. An application for registration as a trade repository shall contain the following information with respect to the applicant's internal audit activities:
  - a. The composition of any Internal Audit Committee, its competences and responsibilities;
  - b. Its Internal audit function charter, methodologies, standards and procedures;
  - c. An explanation how its internal audit charter, methodology and procedures are developed and applied taking into account the nature and extent of the applicant's activities, complexities and risks; and
  - d. A work plan for three years following the date of application focusing and addressing the nature and extent of the applicant's activities, complexities and risks.

## Article 8

### **Regulatory compliance**

An application for registration as a trade repository shall contain the following information regarding an applicant's policies and procedures for ensuring compliance with Regulation (EU) 2015/2365:

- a. A description of the roles of the persons responsible for compliance and of any other staff involved in the compliance assessments, including how the independence of the compliance function from the rest of the business will be ensured;
- b. The internal policies and procedures designed to ensure that the applicant, including its managers and employees, comply with all the

provisions of Regulation (EU) 2015/2365, including a description of the role of the board and senior management;

- c. Where available, the most recent internal report prepared by the persons responsible for compliance or any other staff involved in compliance assessments within the applicant.

## Article 9

### **Senior management and members of the board**

1. An application for registration as a trade repository shall contain detailed information on the knowledge and experience on the members of the senior management and the board on information technology matters.
2. An application for registration as a trade repository shall contain the following information in respect of each member of the senior management and each member of the board:
  - a. A copy of the curriculum vitae;
  - b. Details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, in particular in the form of an official certificate if available within the relevant Member State;
  - c. A self-declaration of good repute in relation to the provision of a financial or data service, where each member of the senior management and the board states whether they:
    - (i) have been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;
    - (ii) have been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government bodies or agencies or are the subject of any such proceedings which are not concluded;
    - (iii) have been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;

- (iv) have been part of the board or senior management of an undertaking whose registration or authorisation was withdrawn by a regulatory body;
  - (v) have been refused the right to carry on activities which require registration or authorisation by a regulatory body;
  - (vi) have been part of the board or senior management of an undertaking which has gone into insolvency or liquidation while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
  - (vii) have been part of the board or senior management of an undertaking which was subject to an adverse decision or penalty by a regulatory body;
  - (viii) have been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a government, regulatory or professional body;
  - (ix) have been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;
- d. a declaration of any potential conflicts of interests that the senior management and the members of the board may have in performing their duties and how these conflicts are managed.

#### Article 10

#### **Staffing policies and procedures**

An application for registration as a trade repository shall contain the following policies and procedures:

- a. a copy of the remuneration policy for the senior management, board members and the staff employed in risk and control functions of the applicant;

- b. a description of the measures put in place by the applicant to mitigate the risk of over-reliance on any individual employees.

#### Article 11

##### **Fitness and properness**

An application for registration as a trade repository shall contain the following information about the applicant's staff:

- a. a general list of the staff directly employed by the trade repository, including their role and qualifications per role;
- b. a specific description of the information technology staff directly employed to provide trade repository services, including as a minimum one person with education and experience in information technology, together with the role and the qualifications of each individual;
- c. a description of the roles and qualifications of each individual who is responsible for internal audit, internal controls, compliance and risk assessment;
- d. the identity of the dedicated staff members and those members of the staff that are operating under an outsourcing arrangement;
- e. details of the training on the applicant's policies and procedures as well as the trade repository business, including any examination or other type of formal assessment required for staff regarding the conduct of trade repository activities.

#### Article 12

##### **Financial reports and business plans**

1. An application for registration as a trade repository shall contain the following financial and business information about the applicant:
  - a. a complete set of financial statements, prepared in conformity with international standards adopted in accordance with Article 3 of Regulation



(EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards<sup>68</sup> ;

- b. where the financial statements of the applicant are subject to statutory audit within the meaning given in Article 2(1) of the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts<sup>69</sup>, the financial reports shall include the audit report on the annual and consolidated financial statements;
  - c. if the applicant is audited, the name and the national registration number of the external auditor;
- 2. An application for registration as a trade repository shall contain a financial business plan contemplating different business scenarios for the trade repository services over a minimum three years' reference period and including the following additional information:
  - a. the expected level of reporting activity in number of transactions,
  - b. the relevant fixed and variable costs identified with respect to the provision of repository services under Regulation 2015/2365, and
  - c. positive and negative variations of at least 20 % from the base activity scenario identified.
- 3. Where the historical financial information referred to in paragraph 1 is not available, an application for registration as a trade repository shall contain the following information about the applicant:
  - a. the pro-forma statement demonstrating proper resources and expected business status in six months after registration is granted;
  - b. an interim financial report where the financial statements are not yet available for the requested period of time;
  - c. a statement of financial position, such as a balance sheet, income statement, changes in equity and of cash flows and notes comprising a summary of accounting policies and other explanatory notes.

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<sup>68</sup> OJ L 243, 11.9.2002, p. 1.

<sup>69</sup> OJ L 157, 9.6.2006, p. 87.

4. An application for registration as a trade repository shall contain the audited annual financial statements of any parent undertaking for the three financial years preceding the date of the application.
5. An application for registration as a trade repository shall also contain the following financial information about the applicant:
  - a. an indication of any future plans for the establishment of subsidiaries and their location;
  - b. a description of the business activities which the applicant plans to carry out, specifying the activities of any subsidiaries or branches.

#### Article 13

#### **Management of conflicts of interest**

An application for registration as a trade repository shall contain the following information on the policies and procedures to manage conflicts of interest put in place by the applicant:

- a. policies and procedures with respect to the identification, management and disclosure of conflicts of interest and a description of the process used to ensure that the relevant persons are aware of the policies and procedures
- b. any other measures and controls put in place to ensure the requirements referred to in point (a) on conflicts of interest management are met.

#### Article 14

#### **Confidentiality**

1. An application for registration as a trade repository shall contain the internal policies, procedures and mechanisms preventing any use of information stored in the prospective trade repository:
  - a. for illegitimate purposes;
  - b. for disclosure of confidential information;
  - c. not permitted for commercial use.
2. The internal policies, procedures and mechanisms shall include the internal procedures on the staff permissions for using passwords to access the data, specifying the staff purpose,

the scope of data being viewed and any restrictions on the use of data, as well as detailed information on any mechanisms and controls in place to protect the reported data from cyber-risks and cyber-attacks.

3. Applicants shall provide ESMA with information on the processes to keep a log identifying each staff member accessing the data, the time of access, the nature of data accessed and the purpose.

#### Article 15

##### **Inventory and mitigation of conflicts of interest**

1. An application for registration as a trade repository shall contain an up-to-date inventory, at the time of the application, of existing material conflicts of interest in relation to any ancillary or other related services provided by the applicant and a description of how these are being managed.
2. Where an applicant is part of a group, the inventory shall include any material conflicts of interest arising from other undertakings within the group and how these conflicts are being managed.

#### Article 16

##### **Information Technology resources and outsourcing**

An application for registration as a trade repository shall contain:

- a. detailed description of the information technology system including the relevant business requirements, functional and technical specifications, system architectural and technical design, data model and data flows, and operations and administrative procedures and manuals;
- b. user facilities developed by the applicant in order to provide services to the relevant users, including a copy of any user manual and internal procedures;
- c. the investment and renewal policies on information technology resources of the applicant;
- d. the outsourcing arrangements entered into by the applicant, including:

- (i) detailed definitions of the services to be provided, including measurable scope of those services, the granularity of the activities as well as conditions under which those activities are rendered, and their timelines;
- (ii) service level agreements with clear roles and responsibilities, metrics and targets for every key requirement of the TR that is outsourced, the methods employed to monitor the service level of the outsourced functions and the measures or actions to be taken in the event of not meeting service level targets; and
- (iii) a copy of the contracts governing such arrangements.

#### Article 17 **Ancillary services**

Where an applicant, an undertaking within its group, or an undertaking with which the applicant has a material agreement relating to trading or post-trading service offers, or plans to offer any ancillary services, its application for registration as a trade repository shall contain:

- a. a description of the ancillary services that the applicant, or its parent group, performs and a description of any agreement that the trade repository may have with companies offering trading, post-trading, or other related services, as well as copies of such agreements;
- b. the procedures and policies that will ensure the adequate level of operational separation in terms of resources, systems and procedures, between the applicant's trade repository services under Regulation 2015/2365 and other business lines, including those business lines that comprise the provision of services under Union or third country legislation, irrespective of whether that separate business line is run by the trade repository, a company belonging to its holding company, or any other company within which it has a material agreement in the context of the trading or post-trading chain or business line.

#### Article 18 **Transparency about access rules**

An application for registration as a trade repository shall contain:

- a. the policies and procedures pursuant to which the different types of users, such as internal users, reporting counterparties, report submitting entities, non-reporting counterparties and authorities, report and access the data in a trade repository including any process that the relevant users may need in order to view or modify registered contracts, in accordance with Article 80(5) of Regulation 648/2012;
- b. a copy of the terms and conditions which determine rights and obligations of the different types of users, such as internal users, reporting counterparties, report submitting entities, non-reporting counterparties and authorities;
- c. a description of the different categories of access available to prospective users if more than one;
- d. the access policies and procedures pursuant to which other services providers may have non-discriminatory access to information maintained by the trade repository where the relevant counterparties have provided their explicit, revocable and optional consent; and
- e. a description of the channels and mechanisms used by the trade repository to disclose to prospective users information on the access to the trade repository.

#### Article 19

##### **Verification of completeness and correctness of data**

An application for registration as a trade repository shall contain the procedures put in place by the applicant in order to:

- a. authenticate the identity of the users accessing the trade repository
- b. verify the completeness and correctness of the schema definition of the data reported to the trade repository in accordance with [insert reference to the article defining the use of xml schema in RTS under Article 12(3)(b)(i) of SFTR]

- c. authorise and permit the recording of data reported for the relevant counterparty of SFT
- d. verify that the logical integrity of the data is maintained at all times
- e. verify the completeness and correctness of the content of the data in accordance with [insert reference to the article on business and content rules in RTS under Article 12(3)(b)(i) of SFTR]
- f. reconcile the data between trade repositories where counterparties report to different trade repositories in accordance with [insert reference to the article on reconciliation in the RTS under Article 12(3)(b)(i) of SFTR]
- g. provide feedback to the counterparties to the SFTs or the third parties reporting on their behalf, on the verifications performed under points b) to e) and the outcomes of the reconciliation process under point f).

## Article 20

### **Pricing policy transparency**

An application for registration as a trade repository shall contain a description of the applicant's:

- a. pricing policy, including any existing discounts and rebates and conditions to benefit from such reductions;
- b. fee structure for providing any trade repository and ancillary services including the estimated cost of the trade repository services and ancillary services, along with the details of the methods used to account the separate cost that the applicant may incur when providing trade repository services and ancillary services;
- c. methods used in order to make the information available for users and prospective users, such as reporting counterparties, report submitting entities and non-reporting counterparties, including a copy of the fee structure where trade repository services and ancillary services shall be unbundled.

## Article 21

## **Operational risk**

1. An application for registration as a trade repository shall contain:
  - a. a detailed description of the resources available and procedures designed to identify and mitigate operational risk and any other material risk to which the applicant is exposed, including a copy of any relevant policies, methodologies, internal procedures and manuals;
  - b. a description of the liquid net assets funded by equity to cover potential general business losses in order to continue providing services as a going concern, and an assessment of the sufficiency of its financial resources with the aim of covering the operational costs of a wind-down or reorganisation of the critical operations and services over at least a six-months period;
  - c. the applicant's business continuity plan and an indication of the policy for updating the plan. In particular, the plan shall include:
    - (i) all business processes, resources, escalation procedures and related systems which are critical to ensuring the services of the trade repository applicant, including any relevant outsourced service and including the trade repository strategy, policy and objectives towards the continuity of these processes;
    - (ii) the arrangements in place with other financial market infrastructure providers including other trade repositories;
    - (iii) the arrangements to ensure a minimum service level of the critical functions and the expected timing of the completion of the full recovery of those processes;
    - (iv) the maximum acceptable recovery time for business processes and systems, having in mind the deadline for reporting to trade repositories as provided for in Article 4 of Regulation (EU) 2015/2365 and the volume of data that the trade repository needs to process within that daily period;
    - (v) the procedures to deal with incident logging and reviews;
    - (vi) testing programme and the results of any tests;

- (vii) the number of alternative technical and operational sites available, their location, the resources when compared with the main site and the business continuity procedures in place in the event that alternate sites need to be used;
  - (viii) information on access to a secondary business site to allow staff to ensure continuity of the service if a main office location is not available;
  - (ix) Plans, procedures and arrangements for emergencies handling and personnel safety;
  - (x) Plans, procedures and arrangements to manage crises, to coordinate the overall business continuity efforts and to determine their timely (within given recovery time objective) and effective activation, mobilisation and escalation capabilities; and
  - (xi) Plans, procedures and arrangements to recover the applicant's system, application and infrastructure components within the prescribed recovery time objective.
- d. a description of the arrangements for ensuring the applicant's trade repository activities in case of disruption and the involvement of trade repository users and other third parties in them.
2. An application for registration as a trade repository shall include procedures to ensure the orderly substitution of the trade repository if its registration is subsequently withdrawn including procedures for the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.
  3. An application for registration as a trade repository shall include a procedure to ensure that where a reporting counterparty or a third party reporting on behalf of non-reporting counterparties decide to report to another trade repository, orderly substitution of the original trade repository occurs, including the transfer of data and the redirection of reporting flows to the other trade repository.

Article 22  
**Recordkeeping policy**



1. An application for registration as a trade repository shall contain information about the receipt and administration of data, including any policies and procedures put in place by the applicant to ensure:
  - a. a timely and accurate registration of the information reported;
  - b. a record-keeping of the reporting log;
  - c. that the data is maintained both online and offline;
  - d. that the data is adequately copied for business continuity purposes.
2. An application for registration as a trade repository shall contain information on the recordkeeping systems, policies and procedures that are used in order to ensure that the data reported is modified appropriately and that positions are calculated correctly in accordance with relevant legislative or regulatory requirements.

#### Article 23

#### **Data availability mechanisms**

An application for registration as a trade repository shall contain a description of the resources, methods and channels that the applicant will use to facilitate access to the information in accordance with Article 12(1), (2) and (3) of Regulation (EU) 2015/2365 on transparency and data availability, together with:

- a. a procedure to calculate the aggregate positions in accordance with [insert reference to technical standards under Article 12(3)(i) SFTR] and a description of the resources, methods and channels that the trade repository will employ in order to facilitate the access to the data contained therein to the public in accordance with Article 12(3)(a) of Regulation (EU) 2015/2365, and the frequency of updates, along with a copy of any specific manuals and internal policies;
- b. a description of the resources, methods and facilities that the trade repository will employ in order to facilitate the access to its information to the relevant authorities in accordance with Article 12(3)(c) of Regulation (EU) 2015/2365, the frequency of the update and the controls and verifications that the trade repository may establish for the access filtering process, along with a copy of any specific manuals and internal procedures;

- c. a procedure and a description of the resources, methods and channels that the trade repository will employ in order to facilitate the timely structured and comprehensive collection of data from counterparties, the access to its information to counterparties to SFTs in accordance with Article 4(6) of Regulation (EU) 2015/2365 and Article 80(5) of Regulation (EU) No 648/2012, along with a copy of the specific manuals and internal policies.

#### Article 24

##### **Direct and immediate access to data by authorities**

An application for registration as a trade repository shall contain:

- a. a procedure under which the authorities can have direct and immediate access to the details of SFTs held at the trade repositories in accordance with [insert reference to technical standards under Article 12(3)(b)(ii) SFTR]
- b. the terms and conditions of such access in accordance with the [insert reference to RTS under Article 12(3)(d) SFTR];
- c. a procedure to ensure the integrity of the data made available to the authorities.

#### Article 25

##### **Payment of fees**

An application for registration as a trade repository shall contain proof of payment of the relevant registration fees as established in [insert reference to Commission Delegated Regulation to be adopted based on ESMA's technical advice under Article 11 SFTR]

#### Article 26

##### **Information to be provided in the case of extension of registration**

Notwithstanding paragraphs (3) and (4) of Article 1, an application for extension of an existing registration for the purposes of Regulation (EU) No 648/2012 shall include information with regards to the following provisions of this Regulation:

- a. Article 1, except point k) of paragraph (2);

- b. Article 2;
- c. Article 5;
- d. Article 7, except point d of paragraph (2);
- e. Article 8(b);
- f. Article 9(1) and 9(d);
- g. Article 11;
- h. Article 12(2);
- i. Article 13;
- j. Article 14 (2);
- k. Article 15;
- l. Article 16, except point c);
- m. Article 17;
- n. Article 18;
- o. Article 19;
- p. Article 20;
- q. Article 21;
- r. Article 22;
- s. Article 23;
- t. Article 24;
- u. Article 25; and
- v. Article 27.

#### Article 27

##### **Verification of the accuracy and completeness of the application**

1. Any information submitted to ESMA during the registration process shall be accompanied by a letter signed by a member of the board of the trade repository and of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

2. The information shall also be accompanied, where relevant, with the relevant corporate legal documentation certifying the accuracy of the data.

#### Article 28

#### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

*For the Commission*

*The President*

## **11 Annex IV – Draft ITS on registration and extension of registration under SFTR**

**COMMISSION IMPLEMENTING REGULATION (EU) No .../...**

**of [ ]**

**laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) 2015/2365 of the European Parliament and of the Council**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank<sup>70</sup>,

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, and in particular Article 5 (8) thereof,

Whereas:

- (1) Any information submitted to the European Securities and Markets Authority (ESMA) in an application for registration of a trade repository should be provided in a durable medium, which enables its storage for future use and reproduction. In order to facilitate the identification of the information submitted by a trade repository, documents included with an application should bear a unique reference number.
- (2) This Regulation is based on the draft implementing technical standards submitted by ESMA to the European Commission, pursuant to the procedure in Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)<sup>71</sup>.
- (3) In accordance with Article 15 of Regulation (EU) No 1095/2010, ESMA has conducted open public consultations on such draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities

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<sup>70</sup> OJ L 337, 23.12.2015, p. 1.

<sup>71</sup> OJ L 331, 15.12.2010, p. 84.

and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### **Format of the application**

1. An application for registration shall be provided in an instrument which stores information in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC of the European Parliament and of the Council<sup>72</sup>.
2. An application for registration shall be submitted in the format set out in the Annex.
3. A trade repository shall give a unique reference number to each document it submits and shall ensure that the information submitted clearly identifies which specific requirement of the delegated act with regard to regulatory technical standards specifying the details of the application for registration of trade repositories adopted pursuant to Article 5(7) of Regulation (EU) 2015/2365 it refers to, in which document that information is provided and also provides a reason if the information is not submitted as outlined in the document references section of the Annex.

#### Article 2

##### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...].

For the Commission

The President

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<sup>72</sup> OJ L 302, 17.11.2009, p. 32.

ANNEX	
FORMAT OF APPLICATION	
GENERAL INFORMATION	
Date of application	
Corporate name of trade repository	
Legal address	
The types of SFTs for which the trade repository is applying to be registered	
Name of the person assuming the responsibility of the application	
Contact details of the person assuming the responsibility of the application	
Name of other person responsible for the trade repository compliance	
Contact details of the person(s) responsible for the trade repository compliance	
Identification of any parent company	

DOCUMENT REFERENCES			
(Article 1(3))			
Article of the delegated act with regard to regulatory technical standards specifying the details of the application for registration of trade repositories adopted pursuant to Article 5(7) of Regulation (EU) 2015/2365	Unique reference number of document	Title of the document	Chapter or section or page of the document where the information is provided or reason why the information is not provided

## 12 Annex V – Draft amendments to RTS on registration under EMIR

COMMISSION DELEGATED REGULATION (EU) No .../...

of [ ]

**supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration as a trade repository**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank,

Having regard to 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, and in particular Article 56(3) thereof,

Whereas:

- (1) The experience in the application of Commission Delegated Regulation (EU) No 150/2013 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository<sup>73</sup> has proved that the provisions for registration of trade repositories under Regulation (EU) No 648/2012 constitute a sound basis to build the framework for registration of trade repositories.
- (2) The evolving nature of the industry however requires certain amendments to be undertaken in order to further strengthen this framework.
- (3) The consistency of requirements for registration under Regulation 648/2012 and under Regulation 2015/2365 is essential for establishing a level playing field among the entities applying for registration.
- (4) The verification function of trade repositories is of primary importance for the achievement of the objectives of transparency and data quality. To be registered under Regulation (EU) No 648/2012, the trade repositories should demonstrate that they have the adequate systems and procedures in place to ensure that they are able to verify the

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<sup>73</sup> OJ L 52, 23.2.2013, p. 25.



completeness and correctness of the details of the derivatives. The procedures should include information on how the trade repository will be authenticating the users, validating the schema of the data, authorising the recording of data, validating the logic and content of the data, reconciling the details of the derivatives and providing feedback to the users.

- (5) Including in the application for registration detailed information on the relevant internal control mechanisms and structures, the internal audit function as well as the audit work plan contributes towards ensuring the efficient functioning of the trade repository.
- (6) The provision of ancillary or non-derivatives repository services introduces additional risks in the functioning of a trade repository. It is important therefore for an applicant to provide ESMA with information on ancillary services, or other business lines that the trade repository offers outside its core activity of derivatives reporting. To ensure that risk of contagion between different services is effectively addressed, the trade repositories should establish an adequate level of operational separation with regards to resources, systems and procedures between the different business lines, including where those business lines comprise the provision of services under EU or third country legislation. Where common systems or resources might not introduce operational risks to the functioning of the trade repository or the trade repository can demonstrate that those are addressed accordingly, such as the use of common front-end of the systems, common authorities' access point to data or the use of the same staff working in sales, compliance, clients' services helpdesk, there could be no need for the trade repository to duplicate resources. In those other situations, such as the validation, the reconciliation or the recordkeeping of data, where the different structure of the processes and applications would require separation, such separation should be effectively established by the TRs.
- (7) To demonstrate the soundness of their systems and to provide detailed information with regards to their resilience, the trade repositories should provide comprehensive information on their information technology systems. Where the provision of some or all of the repository functions is linked with outsourcing to third parties, either at the level of the group or outside the group, to allow the assessment of the conditions for registration, the trade repository should provide a detailed information on the relevant outsourcing arrangements. Finally, given the relevance of cyber-risks and cyber-attacks and in order to demonstrate that those are correctly managed, the trade repositories should put in place all necessary mechanisms and controls to protect data from cyber-attacks.
- (8) Building on the experience gained, the trade repositories should demonstrate that they are able to ensure the integrity of the data provided to authorities and that they are in a position to provide direct and immediate access to the data in accordance with the relevant requirements included in [insert reference to Articles 4 and 5 under RTS 151/2013].
- (9) By making available aggregate position data to the public in accordance with the applicable requirements, trade repositories fully accomplish their key function of making data available to the public.

- (10) The applicant trade repository should provide information to ESMA to demonstrate that it has the necessary financial resources at its disposal for the performance of its functions on an on-going basis and adequate business continuity arrangements.
- (11) The fees associated with the repository and ancillary services provided by trade repositories are important information for enabling market participants to make an informed choice and should therefore form part of the application for registration as trade repository.
- (12) Given that market participants and authorities rely on the data maintained by trade repositories, strict operational and record-keeping requirements should be clearly distinguishable in a trade repository's application for registration.
- (13) The risk management models associated with the services provided by a trade repository are a necessary item in its application for registration so as to enable market participants to make an informed choice.
- (14) In order to carry out its authorisation duties effectively, ESMA should receive all information from trade repositories with relation to the outsourcing of any operational functions and activities. Such information is necessary to assess or complete the assessment of the application for registration and the documentation therein.
- (15) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (16) In accordance with Article 10 of Regulation (EU) No 1095/2010<sup>74</sup>, ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

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<sup>74</sup> OJ L 331, 15.12.2010, p. 84.

HAS ADOPTED THIS REGULATION

*Article 1*

**Amendments to Commission Delegated Regulation (EU) No 150/2013**

(1) Article 1 is amended as follows:

(a) The second paragraph is replaced by the following:

'The application for registration as a trade repository shall in particular contain the following information:

- a. the corporate name of the applicant and legal address within the Union;
- b. an excerpt from the relevant commercial or court register, or other forms of certified evidence of the place of incorporation and scope of business activity of the applicant, valid at the application date;
- c. information on the classes of derivatives for which the applicant wishes to be registered;
- d. information on whether the applicant is authorised or registered by a competent authority in the Member State where it is established, and in such case, the name of the authority and any reference number related to the authorisation or registration;
- e. the articles of incorporation and, where relevant, other statutory documentation stating that the applicant is to conduct trade repository services;
- f. the minutes from the meeting where the applicant's board approved the application;
- g. the name and contact details of the person(s) responsible for compliance, or any other staff involved in compliance assessments for the applicant;
- h. the programme of operations, including indications of the location of the main business activities;
- i. the identification of any subsidiaries and, where relevant, the group structure;
- j. any service, other than the trade repository function, that the applicant provides or intends to provide;

- k. any information on any pending judicial, administrative, arbitration or any other litigation proceedings irrespective of their type, that the applicant may be party to, particularly as regards tax and insolvency matters and where significant financial or reputational costs may be incurred, or any non- pending proceedings, that may still have any material impact on trade repository costs.'

(2) Article 2 is replaced as follows:

'Where information regarding policies and procedures is provided as part of an application, an applicant shall ensure that the application includes the following items:

- a. an indication that the Board approves the policies, that the senior management approves the procedures and that the senior management is responsible for the implementation and maintenance of the policies and procedures;
- b. a description of how the communication of policies and procedures within the applicant is organised, how compliance with the policies will be ensured and monitored on a day to day basis, and the person or persons responsible for compliance in that regard;
- c. any records indicating that employed and dedicated staff are aware of the policies and procedures;
- d. a description of the measures to adopt in the event of a breach of policies and procedures;
- e. an indication of the procedure for reporting to ESMA any material breach of policies or procedures which may result in a breach of the conditions for initial registration.'

(3) Article 3 is replaced as follows:

'1. An application for registration as a trade repository shall contain:

- a. a list containing the name of each person or entity who directly or indirectly holds 5 % or more of the applicant's capital or of its voting rights or whose

holding makes it possible to exercise a significant influence over the applicant's management;

- b. a list of any undertakings in which a person referred to in point (a) holds 5 % or more of the capital or voting rights or over whose management they exercise a significant influence.

2. Where the applicant has a parent undertaking, it shall:

- a. identify the legal address of the parent undertaking;
- b. indicate whether the parent undertaking is authorised or registered and subject to supervision, and when this is the case, state any reference number and the name of the responsible supervisory authority.'

(4) Article 7 is replaced as follows:

'1. An application for registration as a trade repository shall contain a detailed information of the internal control system of the applicant. This shall include information regarding its compliance function, risk assessment, internal control mechanisms and arrangements of its internal audit function.

2. That detailed information shall include:

- a. the applicant's internal control policies and respective procedures related to their consistent and appropriate implementation;
- b. any policies, procedures and manuals regarding the monitoring and evaluation of the adequacy and effectiveness of the applicant's systems;
- c. any policies, procedures and manuals regarding the control and safeguard for the applicant's information processing systems;
- d. the identity the internal bodies in charge of the evaluation of the relevant internal control findings.

3. An application for registration as a trade repository shall contain the following information with respect to the applicant's internal audit activities:

- a. The composition of any Internal Audit Committee, its competences and responsibilities;
- b. Its Internal audit function charter, methodologies, standards and procedures;

- c. An explanation how its internal audit charter, methodology and procedures are developed and applied taking into account the nature and extent of the applicant's activities, complexities and risks; and
- d. A work plan for three years following the date of application focusing and addressing the nature and extent of the applicant's activities, complexities and risks.'

(5) Article 9 is replaced by the following:

1. An application for registration as a trade repository shall contain detailed information on the knowledge and experience on the members of the senior management and the board on information technology matters.

2. An application for registration as a trade repository shall contain the following information in respect of each member of the senior management and each member of the board:

- a. a copy of the curriculum vitae;
- b. details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, in particular in the form of an official certificate if available within the relevant Member State;
- c. a self-declaration of good repute in relation to the provision of a financial or data service, where each member of the senior management and the board states whether they:
  - (i) have been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;
  - (ii) have been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government bodies or agencies or are the subject of any such proceedings which are not concluded;
  - (iii) have been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for impropriety or fraud in the management of a business;

- (iv) have been part of the board or senior management of an undertaking whose registration or authorisation was withdrawn by a regulatory body;
  - (v) have been refused the right to carry on activities which require registration or authorisation by a regulatory body;
  - (vi) have been part of the board or senior management of an undertaking which has gone into insolvency or liquidation while this person was connected to the undertaking or within a year of the person ceasing to be connected to the undertaking;
  - (vii) have been part of the board or senior management of an undertaking which was subject to an adverse decision or penalty by a regulatory body;
  - (viii) have been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a government, regulatory or professional body;
  - (ix) have been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;
- d. a declaration of any potential conflicts of interests that the senior management and the members of the board may have in performing their duties and how these conflicts are managed.'

(6) Article 11 is replaced as follows:

'An application for registration as a trade repository shall contain the following information about the applicant's staff:

- a. a general list of the staff directly employed by the trade repository, including their role and qualifications per role;
- b. a specific description of the information technology directly staff employed for to provide trade repository services, including as a minimum one

person with education and experience in information technology, together with the role and the qualifications of each individual

- c. a description of the roles and qualifications of each individual who is responsible for internal audit, internal controls, compliance and risk assessment;
- d. the identity of the dedicated staff members and those members of the staff that are operating under an outsourcing arrangement;
- e. details of the training on the applicant's policies and procedures as well as the trade repository business, including any examination or other type of formal assessment required for staff regarding the conduct of trade repository activities'

(7) Article 12 is replaced as follows:

'1. An application for registration as a trade repository shall contain the following financial and business information about the applicant:

- a. a complete set of financial statements, prepared in conformity with international standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards<sup>75</sup> ;
- b. where the financial statements of the applicant are subject to statutory audit within the meaning given in Article 2(1) of the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts<sup>76</sup>, the financial reports shall include the audit report on the annual and consolidated financial statements;
- c. if the applicant is audited, the name and the national registration number of the external auditor;

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<sup>75</sup> OJ L 243, 11.9.2002, p. 1

<sup>76</sup> OJ L 157, 9.6.2006, p. 87.



2. An application for registration as a trade repository shall contain a financial business plan contemplating different business scenarios for the trade repository services over a minimum three years' reference period and including the following additional information:

- a. the expected level of reporting activity in number of transactions,
- b. the relevant fixed and variable costs identified with respect to the provision of repository services under Regulation 648/2012, and
- c. positive and negative variations of at least 20 % from the base activity scenario identified.

3. Where the historical financial information referred to in paragraph 1 is not available, an application for registration as a trade repository shall contain the following information about the applicant:

- a. the pro-forma statement demonstrating proper resources and expected business status in six months after registration is granted;
- b. an interim financial report where the financial statements are not yet available for the requested period of time;
- c. a statement of financial position, such as a balance sheet, income statement, changes in equity and of cash flows and notes comprising a summary of accounting policies and other explanatory notes.

4. An application for registration as a trade repository shall contain the audited annual financial statements of any parent undertaking for the three financial years preceding the date of the application.

5. An application for registration as a trade repository shall also contain the following financial information about the applicant:

- a. an indication of any future plans for the establishment of subsidiaries and their location;
- b. a description of the business activities which the applicant plans to carry out, specifying the activities of any subsidiaries or branches.'

(8) Article 14 is amended as follows:

- (a) The first paragraph is replaced by the following:

‘An application for registration as a trade repository shall contain the internal policies, procedures and mechanisms preventing any use of information stored in the prospective trade repository:

- a. for illegitimate purposes;
- b. for disclosure of confidential information;
- c. not permitted for commercial use.’

- (b) The second paragraph is replaced by the following:

‘The internal policies, procedures and mechanisms shall include a description of the internal procedures on the staff permissions for using passwords to access the data, specifying the staff purpose, the scope of data being viewed and any restrictions on the use of data, as well as detailed information on any mechanisms and controls in place to protect the reported data from cyber risks and cyber-attacks.

- (9) Article 16 is replaced as follows:

‘An application for registration as a trade repository shall contain:

- a. detailed description of the information technology system including the relevant business requirements, functional and technical specifications, system architectural and technical design, data model and data flows, and operations and administrative procedures and manuals;
- b. user facilities developed by the applicant in order to provide services to the relevant users, including a copy of any user manual and internal procedures;
- c. the investment and renewal policies on information technology resources of the applicant;
- d. the outsourcing arrangements entered into by the applicant, including:
  - (i) detailed definitions of the services to be provided, including measurable scope of those services, the granularity of the activities as well as conditions under which those activities are rendered, and their timelines;

- (ii) service level agreements with clear roles and responsibilities, metrics and targets for every key requirement of the TR that is outsourced, the methods employed to monitor the service level of the outsourced functions and the measures or actions to be taken in the event of not meeting service level targets; and
- (iii) a copy of the contracts governing such arrangements.

(10) Article 17 is replaced as follows:

‘Where an applicant, an undertaking within its group, or an undertaking with which the applicant has a material agreement relating to trading or post-trading service offers, or plans to offer any ancillary services, its application for registration as a trade repository shall contain:

- a. a description of the ancillary services that the applicant, or its parent group, performs and a description of any agreement that the trade repository may have with companies offering trading, post-trading, or other related services, as well as copies of such agreements;
- b. the procedures and policies that will ensure the adequate level of operational separation in terms of resources, systems and procedures, between the applicant’s trade repository services under Regulation (EU) No 648/2012 and other business lines, including those business lines that relate to the provision of services under Union or third country legislation, and irrespective of whether that separate business line is run by the trade repository, a company belonging to its holding company, or any other company within which it has a material agreement in the context of the trading or post-trading chain or business line.’

(11) Article 18 is replaced as follows:

- d. ‘An application for registration as a trade repository shall contain:
  - a. the policies and procedures pursuant to which the different types of users, such as internal users, reporting counterparties, report submitting entities, non-reporting counterparties and authorities, report and access

the data in a trade repository including any process that the relevant users may need in order to view or modify registered contracts, in accordance with Article 80(5) of Regulation 648/2012;

- b. a copy of the terms and conditions which determine the rights and obligations of the different types of users, such as internal users, reporting counterparties, report submitting entities, non-reporting counterparties and authorities;
- c. a description of the different categories of access available to prospective users if more than one;
- d. the access policies and procedures pursuant to which other services providers may have non-discriminatory access to information maintained by the trade repository where the relevant counterparties have provided their explicit, revocable and optional consent; and
- e. a description of the channels and mechanisms used by the trade repository to disclose to prospective users information on the access to the trade repository.

(12) Article 19 is replaced as follows:

‘An application for registration as a trade repository shall contain the procedures put in place by the applicant in order to:

- a. authenticate the identity of the users accessing the trade repository;
- b. verify the completeness and correctness of derivatives reported to the trade repository in accordance with Article 9 EMIR;
- c. authorise and permit the recording of data reported for the relevant counterparty of a derivative;
- d. verify that the logical integrity of the data is maintained at all times;
- e. verify the completeness and correctness of the content of the data;
- f. reconcile the data between trade repositories where counterparties report to different trade repositories; and
- g. provide feedback to the counterparties to the derivatives or the third parties reporting on their behalf, on the verifications performed under

points b) to e) and the outcomes of the reconciliation process under point f).’

(13) Article 20 is replaced as follows:

‘An application for registration as a trade repository shall contain a description of the applicant’s:

- a. pricing policy, including any existing discounts and rebates and conditions to benefit from such reductions;
- b. fee structure for providing any trade repository and ancillary services including the estimated cost of the trade repository services and ancillary services, along with the details of the methods used to account the separate cost that the applicant may incur when providing trade repository services and ancillary services;
- c. methods used in order to make the information available for users and prospective users, such as reporting counterparties, report submitting entities and non-reporting counterparties, including a copy of the fee structure where trade repository services and ancillary services shall be unbundled.

(14) Article 21 is replaced as follows:

‘1. An application for registration as a trade repository shall contain:

- a. a detailed description of the resources available and procedures designed to identify and mitigate operational risk and any other material risk to which the applicant is exposed, including a copy of any relevant policies, methodologies, internal procedures and manuals;
- b. a description of the liquid net assets funded by equity to cover potential general business losses in order to continue providing services as a going concern, and an assessment of the sufficiency of its financial resources with the aim of covering the operational costs of a wind-down or reorganisation of the critical operations and services over at least a six-months period;
- c. the applicant’s business continuity plan and an indication of the policy for updating the plan. In particular, the plan shall include:

- (i) all business processes, resources, escalation procedures and related systems which are critical to ensuring the services of the trade repository applicant, including any relevant outsourced service and including the trade repository strategy, policy and objectives towards the continuity of these processes;
- (ii) the arrangements in place with other financial market infrastructure providers including other trade repositories;
- (iii) the arrangements to ensure a minimum service level of the critical functions and the expected timing of the completion of the full recovery of those processes;
- (iv) the maximum acceptable recovery time for business processes and systems, having in mind the deadline for reporting to trade repositories as provided for in Article 9 of Regulation (EU) No 648/2012 and the volume of data that the trade repository needs to process within that daily period;
- (v) the procedures to deal with incident logging and reviews;
- (vi) testing programme and the results of any tests;
- (vii) the number of alternative technical and operational sites available, their location, the resources when compared with the main site and the business continuity procedures in place in the event that alternate sites need to be used;
- (viii) information on access to a secondary business site to allow staff to ensure continuity of the service if a main office location is not available;
- (ix) Plans, procedures and arrangements for emergencies handling and personnel safety;
- (x) Plans, procedures and arrangements to manage crises, to coordinate the overall business continuity efforts and to determine their timely (within given recovery time objective) and effective activation, mobilisation and escalation capabilities; and

(xi) Plans, procedures and arrangements to recover the applicant's system, application and infrastructure components within the prescribed recovery time objective.

d. a description of the arrangements for ensuring the applicant's trade repository activities in case of disruption and the involvement of trade repository users and other third parties in them.

2. An application for registration as a trade repository shall include procedures to ensure the orderly substitution of the trade repository if its registration is subsequently withdrawn including procedures for the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.

3. An application for registration as a trade repository shall include a procedure to ensure that where a reporting counterparty or a third party reporting on behalf of non-reporting counterparties decide to report to another trade repository, orderly substitution of the original trade repository occurs, including the transfer of data and the redirection of reporting flows to the other trade repository.'

(15) Article 22 is replaced as follows:

'1. An application for registration as a trade repository shall contain information about the receipt and administration of data, including any policies and procedures put in place by the applicant to ensure:

- a. a timely and accurate registration of the information reported;
- b. a record-keeping of the reporting log;
- c. that the data is maintained both online and offline;
- d. that the data is adequately copied for business continuity purposes.

2. An application for registration as a trade repository shall contain information on the recordkeeping systems, policies and procedures that are used in order to ensure that the data reported is modified appropriately and that positions are calculated correctly in accordance with relevant legislative or regulatory requirements.'

(16) Article 23 is replaced as follows:

‘An application for registration as a trade repository shall contain a description of the resources, methods and channels that the applicant will use to facilitate access to the information in accordance with Article 81(1), 81(3) and 81(5) of Regulation (EU) No 648/2012 on transparency and data availability, together with:

- a. a procedure to calculate the aggregate positions in accordance with [insert reference to technical standards under Article 81 (5) EMIR on public data] and description of the resources, methods and channels that the trade repository will employ in order to facilitate the access to the data contained therein to the public in accordance with Article 81(1) of Regulation (EU) No 648/2012, and the frequency of updates, along with a copy of any specific manuals and internal policies;
- b. a description of the resources, methods and facilities that the trade repository will employ in order to facilitate the access to its information to the relevant authorities in accordance with Article 81(3) of Regulation (EU) No 648/2012, the frequency of the update and the controls and verifications that the trade repository may establish for the access filtering process, along with a copy of any specific manuals and internal procedures;
- c. a procedure and a description of the resources, methods and channels that the trade repository will employ in order to facilitate the timely structured and comprehensive collection of data from counterparties, the access to its information to counterparties to derivatives in accordance with Article 80(5) of Regulation (EU) No 648/2012, along with a copy of the specific manuals and internal policies.’

(17) A new Article 23a on direct and immediate access to data by authorities is introduced:

‘An application for registration as a trade repository shall contain:

- a. a procedure under which the authorities have direct and immediate access to the details of derivatives held at the trade repositories
- b. the terms and conditions of such access;
- c. a procedure to ensure the integrity of the data made available to the authorities.’



## *Article 2*

### **Entry into force and application**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

## 13 Annex VI – Draft ITS on format and frequency of the reports to TRs under SFTR

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

**laying down implementing technical standards with regard to the format and frequency of the reports to trade repositories according to Regulation (EU) 2015/2365**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012<sup>77</sup>, and in particular Article 4(10) thereof,

Whereas:

- (1) The details reported by counterparties to SFTs to trade repositories or the European Securities and Markets Authority (ESMA) should be submitted in a harmonised format to allow for efficient data collection and to ensure seamless subsequent aggregation and comparison across repositories. In order to minimise costs for market participants the reporting format for SFTs should also be consistent, to the extent feasible, with that prescribed for the reporting of derivatives contracts under Article 9 of Regulation (EU) No 648/2012. This Regulation therefore prescribes the format for each of the fields to be reported and standardises a report by reference to an ISO standard that is widely used in the financial industry.
- (2) The global legal entity identifier system has now been fully implemented and a counterparty to an SFT should therefore only use this system to identify a legal entity in a report. In order that a counterparty's use of the legal identifier system is effective, a counterparty should ensure that the reference data related to its LEI is renewed in accordance with the terms of the relevant Local Operating Unit. The global legal identifier system insofar as it applies to the branch of an entity is not yet fully in place, therefore until ESMA endorse it, this Regulation provides an ISO standard that should be used to identify a branch until such time as ESMA does endorse the system.
- (3) A process to generate a unique trade identifier for a transaction, where counterparties do not agree on the entity responsible for generating it, has now been established in respect of the reporting of derivatives contracts. In order to ensure consistency with this

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<sup>77</sup> OJ L 337, 23.12.2015, p. 1

process, similar provisions in respect of unique trade identifiers are introduced for counterparties reporting SFTs.

- (4) Given a varying market practice in determining the direction of an SFT, this Regulation specifies for any given SFT whether the reporting counterparty should be identified as a collateral provider or as a collateral taker.
- (5) A number of reports may be submitted in respect of a single SFT, for example if there are successive modifications to it. In order that each report relating to an SFT, and the SFT as a whole, can be properly understood, reports should be submitted in the chronological sequence that the reported events occur.
- (6) In order to determine the real exposures of counterparties, authorities require complete and accurate information on the collateral exchanged between those counterparties. Accordingly, specific rules ensuring a consistent approach with regard to the reporting of collateral for a given SFT or on a net outstanding basis should be determined. For instance, a counterparty to an SFT might provide collateral to the transaction against a pool of assets, a collateral basket. In such a case, the exact details of the collateral may not be known to the reporting counterparty within the period it is required to report the conclusion of the SFT. Even where a counterparty provides collateral using individual assets it may not know all the details it is required to report within this period.
- (7) The reporting of the modification of certain values, in particular the details of collateral value, margin posted or received and collateral reuse, is of particular importance to assess individual entity's exposures, systemic risks to financial stability, liquidity and maturity transformation and velocity of collateral. To avoid the reporting burden on counterparties, these details should be reported as of end of day only if they vary compared with the previous details reported. Specific provision is made in respect of these areas.
- (8) It is essential for financial stability purposes to report the market value of the securities lent or borrowed. Therefore it is proposed to include the reporting of market value of the securities on loan as a required element of transaction data for securities lending and borrowing transactions. The market value should be at close of business of each business day as it is used for collateral management purpose. Similarly, when the counterparties report the market value of collateral, they should do so at close of business as it is used for collateral management purpose.
- (9) Prime brokerage margin lending takes place on a portfolio basis, against a pool of collateral, by reusing assets in the client's margin account as collateral. Margin lending is synonym of net cash debit in base currency. The specificity of the frequency of reporting of margin lending is addressed in this Regulation.
- (10) This Regulation is based on draft implementing technical standards submitted by ESMA to the Commission.

- (11) In accordance with Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(78)</sup>, ESMA has conducted open public consultation on such draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group referred to in Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Data standards and formats for SFT reports**

The details of an SFT in a report made pursuant to Article 4(1) of Regulation (EU) 2015/2365 shall be provided in accordance with the standards and formats specified in Tables 1 to 5 of the Annex to this Regulation, in an electronic and machine-readable form and common XML template in accordance with the ISO 20022 methodology.

*Article 2*

**Identification of counterparties and other entities**

1. A report shall use an ISO 17442 legal entity identifier code to identify:
  - a. a beneficiary which is a legal entity;
  - b. a broking entity;
  - c. a central counterparty (CCP);
  - d. a clearing member;
  - e. an agent lender;
  - f. a CSD participant;
  - g. a counterparty which is a legal entity;
  - h. a tri-party agent;
  - i. a report submitting entity;

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<sup>78</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p.84)

- j. a branch of a counterparty.
- k. issuer of the security

Until the LEI for branches is endorsed by ESMA, the branch shall be identified by ISO 3166-1 alpha-2 code of the country where the branch is located.

2. A counterparty to SFT shall ensure that the reference data related to its ISO 17442 legal entity identifier code is renewed according to the terms of any accredited Local Operating Units of the Global Legal Entity Identifier System.

### Article 3

#### **Unique Trade Identifier**

1. A report shall be identified through either a global unique trade identifier endorsed by ESMA or, in the absence thereof, a unique trade identifier agreed by the counterparties.
2. Where counterparties fail to agree on the entity responsible for generating the unique trade identifier to be assigned to the report, the counterparties shall determine the entity responsible for generating a unique trade identifier in accordance with the following criteria:
  - a. for centrally-executed and cleared SFTs, the unique trade identifier shall be generated at the point of clearing by the CCP for the clearing member. Another unique trade identifier shall be generated by the clearing member for its counterparty;
  - b. for centrally-executed but not centrally-cleared SFTs, the unique trade identifier shall be generated by the trading venue of execution for its member;
  - c. for centrally-confirmed and cleared SFTs, the unique trade identifier shall be generated at the point of clearing by the CCP for the clearing member. Another unique trade identifier shall be generated by the clearing member for its counterparty;
  - d. for SFTs that were centrally-confirmed by electronic means but were not centrally-cleared, the unique trade identifier shall be generated by the trade confirmation platform at the point of confirmation
  - e. for all SFTs other than those referred to in points (a) to (d), the following criteria shall be applied:

- (i) where financial counterparties conclude an SFT with non-financial counterparties, the financial counterparties shall generate the unique trade identifier;
  - (ii) for all securities lending or borrowing transactions other than those referred to in point (i), the collateral provider shall generate the unique trade identifier;
  - (iii) for all SFTs other than those referred to in points (i) and (ii), the collateral taker shall generate the unique trade identifier.
- 3. The counterparty generating the unique trade identifier shall communicate that unique trade identifier to the other counterparty in a timely manner so that the latter is able to meet its reporting obligation.

#### *Article 4*

##### **Counterparty side**

1. The counterparty side to the SFT referred to in Field 9 of Table 1 of the Annex to this Regulation shall be specified in accordance with paragraphs 2 to 4.
2. In the case of a repurchase transaction and a buy-sell back or sell-buy back transaction, the buyer, that is the counterparty that buys securities, commodities, or guaranteed rights relating to title to securities or commodities in the opening or spot leg of the trade and agrees to sell them at a specified price on a future date in the closing or forward leg of the trade, shall be identified in Field 9 of Table 1 of the Annex to this Regulation as the collateral taker. The seller shall be identified in Field 9 of Table 1 of the Annex to this Regulation as the collateral provider. .
3. In the case of securities or commodities borrowing and securities or commodities lending, the lender, that is the counterparty that transfers the securities or commodities subject to a commitment that the borrower will return equivalent securities or commodities on a future date or at the request of the transferor, shall be identified in Field 9 of Table 1 of the Annex to this Regulation as the collateral taker. The borrower shall be identified in Field 9 of Table 1 of the Annex to this Regulation as the collateral provider
4. In the case of margin lending, the borrower, that is the counterparty to which credit is extended in exchange for collateral, shall be identified in Field 9 of Table 1 of the Annex to this Regulation as the collateral provider. The lender, that is the counterparty that provides

the credit in exchange for collateral, shall be identified in Field 9 of Table 1 of the Annex to this Regulation as the collateral taker.

## *Article 5*

### **Frequency of SFT reports**

1. All reports of the details of an SFT specified under Article 1(2) of the RTS and made pursuant to Article 4(1) of Regulation (EU) 2015/2365 shall be provided in their chronological order.
2. A counterparty shall report the details of the relevant outstanding margin lending transaction as of the end of the day, where there is a net cash debit in base currency or where a counterparty's short market value is positive.
3. A counterparty shall report any modification of the details pertaining to the collateral data in fields 75 to 94 of Table 2 of the Annex to this Regulation with action type "Collateral update". The counterparty shall report any such modification as of the end of the day until it reports the termination of the SFT, until it reports the SFT with action type "Error", or until the SFT reaches its maturity date.
4. A counterparty shall report any modifications to the end of day market value of the securities lent or borrowed in field 57 of Table 2 of the Annex to this Regulation with action type "Valuation update". The counterparty shall report any such modification as of the end of the day until it reports the termination of the SFT, until it reports the SFT with action type "Error", or until the SFT reaches its maturity date.
5. A counterparty shall report any modification of the total amount of margin posted or received for all cleared SFT as of the end of the day in fields 8 to 19 of Table 3 of the Annex to this Regulation with action type "Margin update" after it has first reported the total amount of margin posted or received with action type 'New'.
6. A counterparty shall report any modification of the value of reused collateral, reinvested cash and the funding sources with action type "Reuse update" as of the end of the day in fields 8 to 14 of Table 4 of the Annex to this Regulation after it has reported the relevant values with action type 'New'.

## *Article 6*

### **Entry into force**



This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all member States.

Done at Brussels,



ANNEX  
to the  
COMMISSION IMPLEMENTING REGULATION (EU) .../...  
of XXX

laying down implementing technical standards with regard to the format and frequency of the reports to trade repositories according to Regulation (EU) No 648/2012 with regard to regulatory technical standards of the details of reports to be reported to trade repositories

Details to be reported to trade repositories

Table 1

**Counterparty Data**

No	Field	Format
1	Reporting timestamp	ISO 8601 date in the format and Coordinated Universal Time (UTC) time format, i.e. YYYY-MM-DDThh:mm:ssZ
2	Report submitting entity	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
3	Reporting counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
4	Nature of the reporting counterparty	'F' - Financial counterparty 'N' - Non-financial counterparty
5	Sector of the reporting counterparty	Taxonomy for Financial Counterparties: 'CDTI' - Credit institution authorized in accordance with Directive 2013/36/EU or Regulation (EU) No 1024/2013 or a third third-country entity which would require authorisation or registration in accordance with that legislative act 'INVF' - Investment firm authorized in accordance with Directive 2014/65/EU or a third third-country entity which would require authorisation or registration in accordance with that legislative act 'INUN' - Insurance undertaking authorized in accordance with Directive 2009/138/EC or a third third-country entity which would require authorisation or registration in accordance with that legislative act 'AIFD' - AIF managed by AIFMs authorized or registered in accordance with Directive 2011/61/EU or a third third-country entity which would require authorisation or registration in accordance with that legislative act 'ORPI' - Institution for occupational retirement provision authorized or registered in accordance with Directive 2003/41/EC or a third third-country entity which would require authorisation or registration in accordance with that legislative act 'CCPS' - Central counterparty authorized in accordance with

No	Field	Format
		<p>Regulation (EU) No 648/2012 or a third third-country entity which would require authorisation or registration in accordance with that legislative act</p> <p>'REIN' - Reinsurance undertaking authorized in accordance with Directive 2009/138/EC or a third third-country entity which would require authorisation or registration in accordance with that legislative act</p> <p>'CSDS' - Central securities depository authorized in accordance with Regulation (EU) No 909/2014 or a third third-country entity which would require authorisation or registration in accordance with that legislative act</p> <p>'UCIT' - UCITS and its management company, authorized in accordance with Directive 2009/65/EC or a third third-country entity which would require authorisation or registration in accordance with that legislative act</p> <p>Taxonomy for Non-Financial Counterparties. The categories below correspond to the main sections of NACE classification as defined in Regulation (EC) No 1893/2006</p> <p>'A' - Agriculture, forestry and fishing</p> <p>'B' - Mining and quarrying</p> <p>'C' - Manufacturing</p> <p>'D' - Electricity, gas, steam and air conditioning supply</p> <p>'E' - Water supply, sewerage, waste management and remediation activities</p> <p>'F' - Construction</p> <p>'G' - Wholesale and retail trade, repair of motor vehicles and motorcycles</p> <p>'H' - Transportation and storage</p> <p>'I' - Accommodation and food service activities</p> <p>'J' - Information and communication</p> <p>'K' - Financial and insurance activities</p> <p>'L' - Real estate activities</p> <p>'M' - Professional, scientific and technical activities</p> <p>'N' - Administrative and support service activities</p> <p>'O' - Public administration and defence; compulsory social security</p> <p>'P' - Education</p> <p>'Q' - Human health and social work activities</p> <p>'R' - Arts, entertainment and recreation</p> <p>'S' - Other service activities</p> <p>'T' - Activities of households as employers; undifferentiated goods – and services –producing activities of households for own use</p> <p>'U' - Activities of extraterritorial organizations and bodies</p>
6	Additional sector classification	<p>'ETFT' - ETF</p> <p>'MMFT' - MMF</p> <p>'REIT' - REIT</p> <p>'OTHR' – Other</p>

No	Field	Format
7	Branch of the reporting counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code or ISO 3166-1 alpha-2 country code 2 alphabetic characters
8	Branch of the other counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code or ISO 3166-1 alpha-2 country code 2 alphabetic characters
9	Counterparty side	'TAKE' - Collateral taker 'GIVE' - Collateral provider
10	Entity responsible for the report	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
11	Other counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code. Client code (up to 50 alphanumeric characters).
12	Country of the other Counterparty	ISO 3166-1 alpha-2 country code 2 alphabetic characters
13	Beneficiary	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code. Client code (up to 50 alphanumeric characters).
14	Tri-party agent	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
15	Broker	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
16	Clearing member	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
17	CSD participant or indirect participant	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
18	Agent lender	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.

Table 2

### Loan and Collateral Data

No	Field	Format
1	Unique Transaction Identifier (UTI)	Up to 52 alphanumeric character code including four special characters:

No	Field	Format
		Only upper-case alphabetic characters A–Z and the digits 0–9, inclusive in both cases, are allowed.
2	Report tracking number	Up to 52 alphanumeric character code including four special characters: Only upper-case alphabetic characters A–Z and the digits 0–9, inclusive in both cases, are allowed.
3	Event date	ISO 8601 date in the format YYYY-MMDD
4	Type of SFT	'SLEB' - securities or commodities lending or securities or commodities borrowing 'SBSC' - buy-sell back transaction or sell-buy back transaction 'REPO' - repurchase transaction 'MGLD' - margin lending transaction
5	Cleared	'true' 'false'
6	Clearing timestamp	ISO 8601 date in the format and Coordinated Universal Time (UTC) time format, i.e. YYYY-MM-DDThh:mm:ssZ
7	CCP	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
8	Trading venue	ISO 10383 Market Identifier Code (MIC), 4 alphanumeric characters. Where segmental MICs exist for a trading venue, the segmental MIC shall be used.
9	Master agreement type	'MRAA' - MRA 'GMRA' – GMRA 'MSLA' - MSLA 'GMSL' - GMSLA 'ISDA' - ISDA 'DERP' - Deutscher Rahmenvertrag für Wertpapierpensionsgeschäfte 'CNBR' - China Bond Repurchase Master Agreement, 'KRRR' - Korea Financial Investment Association (KOFIA) Standard Repurchase Agreement 'CARA' - Investment Industry Regulatory Organization of Canada (IIROC) Repurchase/Reverse Repurchase Transaction Agreement 'FRFB' - Convention-Cadre Relative aux Operations de Pensions Livrees, 'CHRA' -Swiss Master Repurchase Agreement 'DEMA' - German Master Agreement 'JPBR' - Japanese Master Agreement on the Transaction with Repurchase Agreement of the Bonds 'ESRA' - Contrato Marco de compraventa y Reporto de valores 'OSLA' - Overseas Securities Lending Agreement (OSLA) 'MEFI' - Master Equity and Fixed Interest Stock Lending Agreement (MEFISLA)

No	Field	Format
		'GESL' - Gilt Edged Stock Lending Agreement (GESLA) 'KRSL' - Korean Securities Lending Agreement (KOSLA) 'DERD' - Deutscher Rahmenvertrag für Wertpapierdarlehen 'AUSL' - Australian Masters Securities Lending Agreement (AMSLA) 'JPBL' - Japanese Master Agreement on Lending Transaction of Bonds 'JPSL' - Japanese Master Agreement on the Borrowing and Lending Transactions of Share Certificates 'BIAG' - bilateral agreement 'CSDA' - CSD bilateral agreement Or 'OTHR' if the master agreement type is not included in the above list
10	Other master agreement type	Up to 50 alphanumeric characters
11	Master agreement version	ISO 8601 date in the format YYYY
12	Execution timestamp	ISO 8601 date in the format and Coordinated Universal Time (UTC) time format, i.e. YYYY-MM-DDThh:mm:ssZ
13	Value date (Start date)	ISO 8601 date in the format YYYY-MMDD
14	Maturity date (End date)	ISO 8601 date in the format YYYY-MMDD
15	Termination date	ISO 8601 date in the format YYYY-MMDD
16	Minimum notice period	Integer field up to 3 digits
17	Earliest call-back date	ISO 8601 date in the format YYYY-MMDD
18	General collateral Indicator	'SPEC' - specific collateral 'GENE' - general collateral
19	DBV indicator	'true' 'false'
20	Method used to provide collateral	'TTCA' - title transfer collateral arrangement 'SICA' - securities financial collateral arrangement 'SIUR' - securities financial with the right of use
21	Open term	'true' 'false'
22	Termination optionality	'EGRN' - evergreen 'ETSB' - extendable

No	Field	Format
In the case of margin lending, the attributes listed in fields 23-34 shall be repeated for each currency of the margin loan.		
23	Fixed rate	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100". The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
24	Day count convention	<p>The code representing day count convention:</p> <p>'A001' - IC30360ISDAor30360AmericanBasicRule</p> <p>'A002' - IC30365</p> <p>'A003' - IC30Actual</p> <p>'A004' - Actual360</p> <p>'A005' - Actual365Fixed</p> <p>'A006' - ActualActualICMA</p> <p>'A007' - IC30E360orEuroBondBasismodel1</p> <p>'A008' - ActualActualISDA</p> <p>'A009' - Actual365LorActuActubasisRule</p> <p>'A010' - ActualActualAFB</p> <p>'A011' - IC30360ICMAor30360basicrule</p> <p>'A012' - IC30E2360orEurobondbasismodel2</p> <p>'A013' - IC30E3360orEurobondbasismodel3</p> <p>'A014' - Actual365NL</p> <p>Or up to 35 alphanumeric characters if the day count convention is not included in the above list.</p>
25	Floating rate	<p>The code representing the floating rate index</p> <p>'EONIA' - EONIA</p> <p>'EONS' - EONIA SWAP</p> <p>'EURI' - EURIBOR</p> <p>'EUUS' - EURODOLLAR</p> <p>'EUCH' - EuroSwiss</p> <p>'GCFR' - GCF REPO</p> <p>'ISDA' - ISDAFIX</p> <p>'LIBI' - LIBID</p> <p>'LIBO' - LIBOR</p> <p>'MAAA' - Muni AAA</p> <p>'PFAN' - Pfandbriefe</p> <p>'TIBO' - TIBOR</p> <p>'STBO' - STIBOR</p> <p>'BBSW' - BBSW</p> <p>'JIBA' - JIBAR</p> <p>'BUBO' - BUBOR</p> <p>'CDOR' - CDOR</p> <p>'CIBO' - CIBOR</p> <p>'MOSP' - MOSPRIM</p> <p>'NIBO' - NIBOR</p> <p>'PRBO' - PRIBOR</p> <p>'TLBO' - TELBOR</p> <p>'WIBO' - WIBOR</p> <p>'TREA' - Treasury</p> <p>'SWAP' - SWAP</p>

No	Field	Format
		'FUSW' - Future SWAP Or up to 25 alphanumeric characters if the reference rate is not included in the above list
26	Floating rate reference period - time period	Time period describing reference period, whereby the following abbreviations apply: 'YEAR' - Year 'MNTH' - Month 'WEEK' - Week 'DAYS' - Day
27	Floating rate reference period - multiplier	Integer multiplier of the time period describing reference period of the floating rate. Up to 3 numeric characters.
28	Floating rate payment frequency - time period	Time period describing how often the counterparties exchange payments, whereby the following abbreviations apply: 'YEAR' - Year 'MNTH' - Month 'WEEK' - Week 'DAYS' - Day
29	Floating rate payment frequency - multiplier	Integer multiplier of the time period describing how often the counterparties exchange payments. Up to 3 numeric characters.
30	Floating rate reset frequency - time period	Time period describing how often the counterparties reset the floating repo rate, whereby the following abbreviations apply: 'YEAR' - Year 'MNTH' - Month 'WEEK' - Week 'DAYS' - Day
31	Floating rate reset frequency - multiplier	Integer multiplier of the time period describing how often the counterparties reset the floating repo rate. Up to 3 numeric characters.
32	Spread	Up to 5 numeric characters.
33	Margin lending currency amount	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
34	Margin lending currency	ISO 4217 Currency Code, 3 alphabetic characters
Fields 35-36 shall be populated for each floating rate adjustment		

No	Field	Format
35	Adjusted rate	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100". The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
36	Rate date	ISO 8601 date in the format YYYY-MM-DD
37	Principal amount on value date	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
38	Principal amount on maturity date	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
39	Principal amount currency	ISO 4217 Currency Code, 3 alphabetic characters
40	Type of asset	'SECU' - Securities 'COMM' - Commodities
41	Security identifier	ISO 6166 ISIN 12 character alphanumeric code
42	Classification of a security	ISO 10692 CFI, 6 characters alphabetical code
Where a commodity was subject of the SFT it shall be classified in fields 43-45		
43	Base product	Only values in the 'Base product' column of the classification of commodities derivatives table are allowed.
44	Sub product	Only values in the 'Sub - product' column of the classification of commodities derivatives table are allowed.
45	Further sub product	Only values in the 'Further sub - product' of the classification of commodities derivatives table are allowed.
46	Quantity or nominal amount	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
47	Unit of measure	'KILO' - Kilogram, 'PIEC' - Piece, 'TONS' - Ton, 'METR' - Metre, 'INCH' - Inch, 'YARD' - Yard, 'GBGA' - GBGallon, 'GRAM' - Gram, 'CMET' - Centimetre, 'SMET' - SquareMetre, 'FOOT' - Foot, 'MILE' - Mile, 'SQIN' - SquareInch, 'SQFO' - SquareFoot, 'SQMI' - SquareMile, 'GBOU' - GBOunce, 'USOU' - USOunce, 'GBPI' - GBPint, 'USPI' - USPint, 'GBQA' - GBQuart, 'USQA' - USQuart, 'USGA' - USGallon, 'MMET' - Millimetre, 'KMET' - Kilometre, 'SQYA' - SquareYard, 'ACRE' - Acre, 'ARES' - Are, 'SMIL' - SquareMillimetre, 'SCMT' - SquareCentimetre, 'HECT' - Hectare,



No	Field	Format
		'SQKI' - SquareKilometre, 'MILI' - MilliLitre, 'CELI' - Centilitre, 'LITR' - Litre, 'PUND' - Pound, 'ALOW' - Allowances, 'ACCY' - AmountOfCurrency, 'BARL' - Barrels, 'BCUF' - BillionCubicFeet, 'BDFT' - BoardFeet, 'BUSL' - Bushels, 'CEER' - CertifiedEmissionsReduction, 'CLRT' - ClimateReserveTonnes, 'CBME' - CubicMeters, 'DAYS' - Days, 'DMET' - DryMetricTons, 'ENVC' - EnvironmentalCredit, 'ENVO' - EnvironmentalOffset, 'HUWG' - Hundredweight, 'KWDC' - KilowattDayCapacity, 'KWHO' - KilowattHours, 'KWHC' - KilowattHoursCapacity, 'KMOC' - KilowattMinuteCapacity, 'KWMC' - KilowattMonthCapacity, 'KWYC' - KilowattYearCapacity, 'MWDC' - MegawattDayCapacity, 'MWHO' - MegawattHours, 'MWHC' - MegawattHoursCapacity, 'MWMC' - MegawattMinuteCapacity, 'MMOC' - MegawattMonthCapacity, 'MWYC' - MegawattYearCapacity, 'TONE' - MetricTons, 'MIBA' - MillionBarrels, 'MBTU' - OneMillionBTU, 'OZTR' - TroyOunces, 'UCWT' - USHundredweight, 'IPNT' - IndexPoint, 'PWRD' - PrincipalWithRelationToDebtInstrument, 'DGEU' - DieselGallonEquivalent, 'GGEU' - GasolineGallonEquivalent, 'TOCD' - TonsOfCarbonDioxide,
48	Currency of nominal amount	ISO 4217 Currency Code, 3 alphabetic characters
49	Security or commodity price	Up to 18 numeric characters including up to 5 decimals in case the price is expressed units. Up to 11 numeric characters including up to 10 decimals in case the price is expressed as percentage or yield The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
50	Price currency	ISO 4217 Currency Code, 3 alphabetic characters
51	Security quality	'INVG' - Investment grade 'NIVG' - Non-investment grade 'NOTR' - Non-rated
52	Maturity of the security	ISO 8601 date in the format YYYY-MM-DD
53	Jurisdiction of the issuer	ISO 3166-1 alpha-2 country code 2 alphabetic characters
54	LEI of the issuer	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
55	Security type	'GOVS' - Government securities 'SUNS' - Supra-nationals and agencies securities 'FIDE' - Debt securities (including covered bonds) issued by banks and other financial institutions 'NFID' - Corporate debt securities (including covered bonds) issued by non-financial institutions 'SEPR' - Securitized products (including CDO, CMBS, ABCP) 'MEQU' - Main index equities (including convertible bonds)

No	Field	Format
		'OEQU' - Other equities (including convertible bonds) 'OTHR' - Other assets (including shares in mutual funds)
56	Loan value	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
57	Market value	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
58	Fixed rebate rate	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100". The negative symbol, if populated, shall not be counted as a numerical character.
59	Floating rebate rate	The code representing the floating rate index 'EONA' - EONIA 'EONS' - EONIA SWAP 'EURI' - EURIBOR 'EUUS' - EURODOLLAR 'EUCH' - EuroSwiss 'GCFR' - GCF REPO 'ISDA' - ISDAFIX 'LIBI' - LIBID 'LIBO' - LIBOR 'MAAA' - Muni AAA 'PFAN' - Pfandbriefe 'TIBO' - TIBOR 'STBO' - STIBOR 'BBSW' - BBSW 'JIBA' - JIBAR 'BUBO' - BUBOR 'CDOR' - CDOR 'CIBO' - CIBOR 'MOSP' - MOSPRIM 'NIBO' - NIBOR 'PRBO' - PRIBOR 'TLBO' - TELBOR 'WIBO' - WIBOR 'TREA' - Treasury 'SWAP' - SWAP 'FUSW' - Future SWAP Or up to 25 alphanumeric characters if the reference rate is not included in the above list
60	Floating rebate rate reference period - time period	Time period describing reference period, whereby the following abbreviations apply: 'YEAR' - Year 'MNTH' - Month 'WEEK' - Week 'DAYS' - Day

No	Field	Format
61	Floating rebate rate reference period - multiplier	Integer multiplier of the time period describing reference period of the floating rebate rate. Up to 3 numeric characters.
62	Floating rebate rate payment frequency - time period	Time period describing how often the counterparties exchange payments, whereby the following abbreviations apply: 'YEAR' - Year 'MNTH' - Month 'WEEK' - Week 'DAYS' - Day
63	Floating rebate rate payment frequency - multiplier	Integer multiplier of the time period describing how often the counterparties exchange payments. Up to 3 numeric characters.
64	Floating rebate rate reset frequency - time period	Time period describing how often the counterparties reset the floating rebate rate, whereby the following abbreviations apply: 'YEAR' - Year 'MNTH' - Month 'WEEK' - Week 'DAYS' - Day
65	Floating rebate rate reset frequency - multiplier	Integer multiplier of the time period describing how often the counterparties reset the floating rebate rate. Up to 3 numeric characters.
66	Spread of the rebate rate	Up to 5 numeric characters.
67	Lending fee	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100".
68	Exclusive arrangements	'true' 'false'
69	Outstanding margin loan	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
70	Base currency of outstanding margin loan	ISO 4217 Currency Code, 3 alphabetic characters
71	Short market value	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
Collateral data		

No	Field	Format
72	Uncollateralised SL flag	'true' 'false'
73	Collateralisation of net exposure	'true' 'false'
74	Value date of the collateral	ISO 8601 date in the format YYYY-MMDD
Where specific collateral was used, the attributes listed in fields 75-94 shall be repeated for each component of collateral, if applicable		
75	Type of collateral component	'SECU' - Securities 'COMM' - Commodities (only for repos and buy-sell backs) 'CASH' - Cash
Where cash was used as a collateral it shall be described in fields-76-77		
76	Cash collateral amount	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
77	Cash collateral currency	ISO 4217 Currency Code, 3 alphabetic characters
78	Identification of a security used as collateral	ISO 6166 ISIN 12 character alphanumeric code
79	Classification of a security used as collateral	ISO 10692 CFI, 6 characters alphabetical code
Where a commodity was used as a collateral it shall be classified in fields 80-82		
80	Base product	Only values in the 'Base product' column of the classification of commodities derivatives table are allowed.
81	Sub - product	Only values in the 'Sub - product' column of the classification of commodities derivatives table are allowed.
82	Further sub - product	Only values in the 'Further sub - product' of the classification of commodities derivatives table are allowed.
83	Collateral quantity or nominal amount	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
84	Collateral unit of measure	'KILO' - Kilogram, 'PIEC' - Piece, 'TONS' - Ton, 'METR' - Metre, 'INCH' - Inch, 'YARD' - Yard, 'GBGA' - GBGallon, 'GRAM' - Gram, 'CMET' - Centimetre, 'SMET' - SquareMetre, 'FOOT' - Foot, 'MILE'

No	Field	Format
		- Mile, 'SQIN' - SquareInch, 'SQFO' - SquareFoot, 'SQMI' - SquareMile, 'GBOU' - GBounce, 'USOU' - USounce, 'GBPI' - GBPint, 'USPI' - USPint, 'GBQA' - GBQuart, 'USQA' - USQuart, 'USGA' - USGallon, 'MMET' - Millimetre, 'KMET' - Kilometre, 'SQYA' - SquareYard, 'ACRE' - Acre, 'ARES' - Are, 'SMIL' - SquareMillimetre, 'SCMT' - SquareCentimetre, 'HECT' - Hectare, 'SQKI' - SquareKilometre, 'MILI' - MilliLitre, 'CELI' - Centilitre, 'LITR' - Litre, 'PUND' - Pound, 'ALOW' - Allowances, 'ACCY' - AmountOfCurrency, 'BARL' - Barrels, 'BCUF' - BillionCubicFeet, 'BDFT' - BoardFeet, 'BUSL' - Bushels, 'CEER' - CertifiedEmissionsReduction, 'CLRT' - ClimateReserveTonnes, 'CBME' - CubicMeters, 'DAYS' - Days, 'DMET' - DryMetricTons, 'ENVC' - EnvironmentalCredit, 'ENVO' - EnvironmentalOffset, 'HUWG' - Hundredweight, 'KWDC' - KilowattDayCapacity, 'KWHO' - KilowattHours, 'KWHC' - KilowattHoursCapacity, 'KMOC' - KilowattMinuteCapacity, 'KWMC' - KilowattMonthCapacity, 'KWYC' - KilowattYearCapacity, 'MWDC' - MegawattDayCapacity, 'MWHO' - MegawattHours, 'MWHC' - MegawattHoursCapacity, 'MWMC' - MegawattMinuteCapacity, 'MMOC' - MegawattMonthCapacity, 'MWYC' - MegawattYearCapacity, 'TONE' - MetricTons, 'MIBA' - MillionBarrels, 'MBTU' - OneMillionBTU, 'OZTR' - TroyOunces, 'UCWT' - USHundredweight, 'IPNT' - IndexPoint, 'PWRD' - PrincipalWithRelationToDebtInstrument, 'DGEU' - DieselGallonEquivalent, 'GGEU' - GasolineGallonEquivalent, 'TOCD' - TonsOfCarbonDioxide,
85	Currency of collateral nominal amount	ISO 4217 Currency Code, 3 alphabetic characters
86	Price currency	ISO 4217 Currency Code, 3 alphabetic characters
87	Price per unit	Up to 18 numeric characters including up to 5 decimals in case the price is expressed in units. Up to 11 numeric characters including up to 10 decimals in case the price is expressed as percentage or yield The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
88	Collateral market value	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
89	Haircut or margin	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100". The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.

No	Field	Format
90	Collateral quality	'INVG' - Investment grade 'NIVG' - Non-investment grade 'NOTR' - Non-rated 'NOAP' - Not applicable
91	Maturity of the security	ISO 8601 date in the format YYYY-MM-DD
92	Jurisdiction of the issuer	ISO 3166-1 alpha-2 country code 2 alphabetic characters
93	LEI of the issuer	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
94	Collateral type	'GOVS' - Government securities 'SUNS' - Supra-nationals and agencies securities 'FIDE' - Debt securities (including covered bonds) issued by banks and other financial institutions 'NFID' - Corporate debt securities (including covered bonds) issued by non-financial institutions 'SEPR' - Securitized products (including CDO, CMBS, ABCP) 'MEQU' - Main index equities (including convertible bonds) 'OEQU' - Other equities (including convertible bonds) 'OTHR' - Other assets (including shares in mutual funds)
95	Availability for collateral reuse	'true' 'false'
Field 96 shall be populated in the case where collateral basket was used. The explicit collateral allocation for SFTs transacted against a collateral pool should be reported in fields 75-94 when available		
96	Collateral basket identifier	ISO 6166 ISIN 12 character alphanumeric code, or 'NTAV'
97	Portfolio code	52 alphanumeric character code including four special characters: . - _ Special characters are not allowed at the beginning and at the end of the code. No space allowed.
98	Action type	'NEWT' - New 'MODI' - Modification 'VALU' - Valuation 'COLU' - Collateral update 'EROR' - Error 'CORR' - Correction 'ETRM' - Termination / Early Termination 'POSC' - Position component
99	Level	'TCTN' - Transaction 'PSTN' - Position

Table 3

### Margin Data

No	Field	Format
1	Reporting timestamp	ISO 8601 date in the format and Coordinated Universal Time (UTC) time format, i.e. YYYY-MM-DDThh:mm:ssZ
2	Event date	ISO 8601 date in the format YYYY-MMDD
3	Report submitting entity	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
4	Reporting Counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
5	Entity responsible for the report	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
6	Other counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
7	Portfolio code	52 alphanumeric character code including four special characters: . - _ . Special characters are not allowed at the beginning and at the end of the code. No space allowed.
8	Initial margin posted	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
9	Currency of the initial margin posted	ISO 4217 Currency Code, 3 alphabetic characters
10	Variation margin posted	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
11	Currency of the variation margins posted	ISO 4217 Currency Code, 3 alphabetic characters
12	Initial margin received	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
13	Currency of the initial margin received	ISO 4217 Currency Code, 3 alphabetic characters
14	Variation margin received	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.

No	Field	Format
15	Currency of the variation margins received	ISO 4217 Currency Code, 3 alphabetic characters
16	Excess collateral posted	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
17	Currency of the excess collateral posted	ISO 4217 Currency Code, 3 alphabetic characters
18	Excess collateral received	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
19	Currency of the excess collateral received	ISO 4217 Currency Code, 3 alphabetic characters
20	Action type	'NEWT' - New 'MARU' - Margin update 'EROR' - Error 'CORR' - Correction

Table 4

#### Re-use, Cash Reinvestment and Funding Sources Data

No	Field	Format
1	Reporting timestamp	ISO 8601 date in the format and UTC time format, i.e. YYYY-MM-DDThh:mm:ssZ
2	Event date	ISO 8601 date in the format YYYY-MMDD
3	Report submitting entity	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
4	Reporting counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
5	Entity responsible for the report	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.



No	Field	Format
6	Type of collateral component	'????' - Securities '????' - Cash
Fields 7-9 should be repeatable for each security		
7	Collateral component	ISO 6166 ISIN 12 character alphanumeric code
8	Value of reused collateral	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
9	Estimated reuse of collateral	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
10	Reinvestment Rate	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100".
Fields 11-13 should be repeated for each investment which cash collateral has been re-invested in and each currency.		
11	Re-invested cash	'MMFT' - registered money market fund 'OCMP' - any other commingled pool 'REPM' - the repo market 'SDPU' - direct purchase of securities 'OTHR' - other
12	Re-invested cash amount	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If populated, it shall be represented with a dot.
13	Re-invested cash currency	ISO 4217 Currency Code, 3 alphabetic characters
In the case of margin lending transactions, the counterparty should report fields 14-15. Information in these fields should be provided at entity level.		
14	Funding sources	'REPO' - repos or BSB 'SECL' - cash collateral from securities lending 'FREE' - free credits 'CSHS' - proceeds from customer short sales 'BSHS' - proceeds from broker short sales 'UBOR' - unsecured borrowing 'OTHR' - other
15	Market value of the funding sources	Up to 18 numeric characters including up to 5 decimals. The decimal mark is not counted as a numeric character. If not possible, pro rata amount.

No	Field	Format
16	Action type	'NEWT' - New 'REUU' - reuse update 'EROR' - Error 'CORR' - Correction

Table 5

**Classification of commodities**

Base product	Sub - product	Further sub - product
'AGRI' - Agricultural	'GROS' - Grains Oil Seeds	'FWHT' - Feed Wheat 'SOYB' - Soybeans 'CORN' - Maize 'RPSD' - Rapeseed 'RICE' - Rice 'OTHR' - Other
	'SOFT' - Softs	'CCOA' - Cocoa 'ROBU' - Robusta Coffee 'WHSG' - White Sugar 'BRWN' - Raw Sugar 'OTHR' - Other
	'POTA' - Potato	
	'OOLI' - Olive oil	'LAMP' - 'Lampante' 'OTHR' - Other
	'DIRY' - Dairy	
	'FRST' - Forestry	
	'SEAF' - Seafood	
	'LSTK' - Livestock	
	'GRIN' - Grain	'MWHT' - Milling Wheat 'OTHR' - Other
	'OTHR' - Other	
'NRGY' - 'Energy	'ELEC' - Electricity	'BSLD' - Base load 'FTR' - Financial Transmission Rights 'PKLD' - Peak load 'OFFP' - Off-peak 'OTHR' - Other
	'NGAS' - Natural Gas	'GASP' - GASPOOL 'LNGG' - LNG 'NBPG' - NBP 'NCGG' - NCG 'TTFG' - TTF 'OTHR' - Other
	'OILP' - Oil	'BAKK' - Bakken 'BDSL' - Biodiesel 'BRNT' - Brent 'BRNX' - Brent NX 'CND' - Canadian 'COND' - Condensate 'DSEL' - Diesel 'DUBA' - Dubai 'ESPO' - ESPO 'ETHA' - Ethanol

		'FUEL' - Fuel 'FOIL' - Fuel Oil 'GOIL' - Gasoil 'GSLN' - Gasoline 'HEAT' - Heating Oil 'JTFL' - Jet Fuel 'KERO' - Kerosene 'LLSO' - Light Louisiana Sweet (LLS) 'MARS' - Mars 'NAPH' - Naptha 'NGLO' - NGL 'TAPI' - Tapis 'URAL' - Urals 'WTIO' - WTI 'OTHR' - Other
	'COAL' - Coal 'INRG' - Inter Energy 'RNNG' - Renewable energy 'LGHT' - Light ends 'DIST' - Distillates 'OTHR' - Other	
'ENVR' - Environmental	'EMIS' - Emissions	'CERE' - CER 'ERUE' - ERU 'EUA' - EUA 'EUAA' - EUAA 'OTHR' - Other
	'WTHR' - Weather 'CRBR' - Carbon related 'OTHR' - Other	
'FRGT' - 'Freight'	'WETF' - Wet	'TNKR' - Tankers 'OTHR' - Other
	'DRYF' - Dry	'DBCR' - Dry bulk carriers 'OTHR' - Other
	'CSHP' - Containerships	
	'OTHR' - Other	
'FRTL' - 'Fertilizer'	'AMMO' - Ammonia 'DAPH' - DAP (Diammonium Phosphate) 'PTSH' - Potash 'SLPH' - Sulphur 'UREA' - Urea 'UAAN' - UAN (urea and ammonium nitrate) 'OTHR' - Other	
'INDP' - Industrial products'	'CSTR' - Construction 'MFTG' - Manufacturing	

'METL' - Metals'	'NPRM' - Non Precious	'ALUM' - Aluminium 'ALUA' - Aluminium Alloy 'CBLT' - Cobalt 'COPR' - Copper 'IRON' - Iron ore 'LEAD' - Lead 'MOLY' - Molybdenum 'NASC' - NASAAC 'NICK' - Nickel 'STEL' - Steel 'TINN' - Tin 'ZINC' - Zinc 'OTHR' - Other
	'PRME' - Precious	'GOLD' - Gold 'SLVR' - Silver 'PTNM' - Platinum 'PLDM' - Palladium 'OTHR' - Other
'MCEX' - Multi Commodity Exotic'		
'PAPR' - Paper'	'CBRD' - Containerboard 'NSPT' - Newsprint 'PULP' - Pulp 'RCVP' - Recovered paper 'OTHR' - Other	
'POLY' - Polypropylene'	'PLST' – Plastic 'OTHR' - Other	
'INFL' - Inflation'		
'OEST' - Official economic statistics'		
'OTHC' - Other C10 'as defined in Table 10.1 Section 10 of Annex III to Commission Delegated Regulation supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives		
'OTHR' - Other		



## 14 Annex VII – Draft RTS on the details of reports to be reported to TRs under SFTR

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

**supplementing Regulation (EU) 2015/2365 of the European Parliament and Council on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 with regard to regulatory technical standards of the details of reports to be reported to trade repositories**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012<sup>79</sup>, and in particular Article 4(9) thereof,

Whereas:

- (1) The purpose of Regulation (EU) 2015/2365 is to provide transparency of SFTs. SFTs cover purely financial transactions, the purpose of which is trading of securities, and which are related to liquidity or maturity transformation, functioning of the financial markets and systemic risk. Although a textual interpretation of “margin lending transactions” could cover transactions related to M&A, corporate restructuring or investing in infrastructure, etc., a purposive interpretation of that definition argues against considering those transactions as “margin lending transactions” within the meaning of the SFTR. This is demonstrated by the stated purpose of the Regulation (EU) 2015/2365 in the recitals and by the choice of transactions that are listed as SFTs. Indeed, expanding the scope of reporting of “margin lending transactions” could undermine the purpose of the regulation by collecting an enormous amount of irrelevant information.
- (2) In order to ensure consistency between the reporting to trade repositories of derivatives contracts, pursuant to Article 9 of Regulation (EU) No 648/2012, and the reporting to trade repositories of SFTs, this Regulation specifies details of SFTs to be reported in tables of fields that are similar, where feasible, to those prescribed for the reporting of derivatives contracts.
- (3) The accurate classification and precise identification of SFTs is essential for the efficient use of data and for the meaningful aggregation of data across trade repositories, and

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<sup>79</sup> OJ L 337, 23.12.2015, p. 1

therefore contributes to the objectives of the Financial Stability Board set out in the policy framework adopted by the FSB entitled “Strengthening Oversight and Regulation of Shadow Banking” (“FSB Policy Framework”) published on 29 August 2013. The reporting requirements in this Regulation also facilitate the global data collection and aggregation initiative outlined in the FSB November 2015 Report<sup>80</sup> on Standards and processes for global securities financing data collection and aggregation.

- (4) Specific provisions relate to the reporting of the details of an SFT that is cleared by a central counterparty, in order to provide clarity in this area. In addition to a more general provision, this Regulation addresses the specific situations of the clearing of an SFT that has already been reported to a trade repository and of an SFT that is concluded and cleared on the same calendar day.
- (5) Counterparties should be able to report the details of the collateral to an SFT even where it is provided on a net basis, the result of offsetting a number of transactions between two counterparties against each other. As there may be no direct allocation of collateral to a loan in an SFT in such a situation, this Regulation includes an ‘action type’ that allows a report of a collateral update to be provided independently of the underlying loan data. As provided in Article 2(1)(b) of the Directive 2002/47/EC on financial collateral arrangements, the securities subject to the purchase and repurchase in a repurchase agreement are collateral. This Regulation therefore specifies the collateral details that must be submitted in an initial SFT report and provides for the reporting of information that subsequently becomes known to the counterparty.
- (6) To provide more useful information to authorities that access the relevant SFT details in trade repositories, a counterparty should provide the International Securities Identification Number (ISIN) of any collateral basket it uses to provide collateral to an SFT, if that basket has an ISIN.
- (7) The details to be reported of any reuse of collateral to an SFT are set out in a separate Table in this Regulation so that they can be easily identified and reported in an SFT report as appropriate.
- (8) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (9) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

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<sup>80</sup> <http://www.fsb.org/wp-content/uploads/FSB-Standards-for-Global-Securities-Financing-Data-Collection.pdf>



HAS ADOPTED THIS REGULATION:

*Article 1*

**Details of SFT to be reported pursuant to Article 4(1) of Regulation (EU) 2015/2365**

1. An SFT report made pursuant to Article 4(1) of Regulation (EU) 2015/2365 shall include complete and accurate details referred to in Table 1, Table 2, Table 3 and Table 4 of the Annex to this Regulation that pertain to the SFT concerned.
2. When reporting the conclusion of an SFT, a counterparty shall specify in its report the action type “New” in Field 98 in Table 2 of the Annex to this Regulation. Any subsequent reports of the details of this SFT shall specify the relevant action type in Field 98 in Table 2 of the Annex to this Regulation that relates to the SFT.

*Article 2*

**Cleared trades**

1. Where an SFT whose details have already been reported pursuant to Article 4 of Regulation (EU) 2015/2365 is subsequently cleared by a central counterparty (CCP), that SFT shall be reported as terminated by specifying in Field 98 in Table 2 of the Annex to this Regulation the action type “Termination/Early Termination” and new SFTs resulting from clearing shall be reported.
2. Where an SFT is both concluded on a trading venue and cleared on the same day, only the SFT resulting from clearing shall be reported.
3. A counterparty shall report the details set out in Table 3 of the Annex to this Regulation of the margin posted or received for a cleared SFT with the relevant action type specified in Field 20 in Table 3 of the Annex to this Regulation that relates to the margin report.

*Article 3*

**Collateral reporting**

1. Where the counterparties to a securities or commodities lending or borrowing transaction agree not to transfer cash, securities or commodities as collateral, they shall specify it in Field 72 of Table 2 of the Annex to this Regulation.

2. Where the collateral of the SFT is explicitly linked to a loan and is known by the reporting deadline, the counterparty shall specify complete and accurate details of all individual collateral components as specified in the fields 75 to 94 of Table 2 of Annex to this Regulation when reporting this SFT for the first time with the action type 'New' in Field 98 of Table 2 of the Annex to this Regulation. Where the collateral of the SFT is explicitly linked to a loan, but is not known by the reporting deadline, then the counterparty shall report with the action type "Collateral update" in Field 98 the complete and accurate details of all individual collateral components as soon they become known to it and no later than the working day following the Value date, as specified in Field 13 of Table 2 of the Annex to this Regulation.
3. When a counterparty collateralises one or more SFTs with a collateral basket that is identified by an International Securities Identification Number (ISIN), it shall specify in field 96 of Table 2 of Annex to this Regulation the ISIN of the collateral basket to which the relevant SFT relates when reporting it with the action type 'New' in Field 98 in Table 2 of the Annex to this Regulation. When a counterparty collateralises one or more SFTs with a collateral basket that is not identified by an ISIN, it shall specify this detail in field 96 of Table 2 of Annex to this Regulation when reporting this SFT with the action type 'New' in Field 98 in Table 2 of the Annex. The counterparty shall also specify complete and accurate details of all individual collateral components from the collateral basket that collateralise the SFTs in the fields 75 to 94 of Table 2 of Annex using action type 'Collateral update" in Field 98 in Table 2 of the Annex to this Regulation as soon they become known to it and no later than the working day following the Value date, as specified in Field 13 of Table 2 of the Annex to this Regulation.
4. When a counterparty collateralises its SFTs on a net exposure, it shall specify this detail in Field 73 of Table 2 of the Annex to this Regulation. The counterparty shall also specify complete and accurate details of all individual collateral components in the fields 75 to 94 of Table 2 of Annex using action type 'Collateral update" in Field 98 in Table 2 of the Annex as soon they become known to it and no later than the working day following the Value date, as specified in Field 13 of Table 2 of the Annex to this Regulation.

#### *Article 4*

#### **Collateral reuse reporting**

1. Where a counterparty receives any financial instrument as collateral, it shall report complete and accurate details of any reuse by it of any financial instrument by specifying in one report the details in Fields 7 to 9 of Table 4 of the Annex to this Regulation for each financial instrument.
2. Where a counterparty receives cash as collateral, it shall report complete and accurate details of any cash collateral reinvestment by it of any currency by specifying in one report the details in Fields 11 to 13 of Table of the Annex to this Regulation for each currency.

#### *Article 5*

#### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

## ANNEX

to the

### COMMISSION DELEGATED REGULATION (EU) .../...

supplementing Regulation (EU) 2015/2365 of the European Parliament and Council on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 with regard to regulatory technical standards of the details of reports to be reported to trade repositories

Details to be reported to trade repositories

Table 1

#### Counterparty Data

No	Field	Details to be reported	Repo	BSB	SL	ML
1	Reporting timestamp	Date and time of submission of the report to the trade repository.	Y	Y	Y	Y
2	Report submitting entity	Unique code identifying the entity which submits the report. In the case where submission of the report has been delegated to a third party or to the other counterparty, a unique code identifying that entity.	Y	Y	Y	Y
3	Reporting counterparty	Unique code identifying the reporting counterparty	Y	Y	Y	Y
4	Nature of the reporting counterparty	Indicates if the reporting counterparty is a financial or non-financial counterparty	Y	Y	Y	Y
5	Sector of the reporting counterparty	One or more codes that classify the nature of the Reporting Counterparty's business activities. If the reporting counterparty is a financial counterparty, all necessary codes included in the Taxonomy for financial counterparties and applying to that counterparty shall be reported. If the reporting counterparty is a non-financial counterparty, all necessary codes included in the Taxonomy for non-financial counterparties and applying to that counterparty shall be reported. Where more than one activity is reported, the codes shall be populated	Y	Y	Y	Y

No	Field	Details to be reported	Repo	BSB	SL	ML
		in order of the relative importance of the corresponding activities.				
6	Additional sector classification	In the case where the reporting counterparty is an Undertaking for Collective Investment in Transferable Securities (UCITS) or Alternative Investment Fund (AIF), a code that determines whether it is an Exchange-Traded Fund (ETF) or a Money Market Fund (MMF). In the case where the reporting counterparty is an Alternative Investment Fund (AIF) or a non-financial counterparty undertaking financial and insurance activities or real estate activities, a code that determines whether it is a Real Estate Investment Trust (REIT).	Y	Y	Y	Y
7	Branch of the reporting counterparty	When the Reporting Counterparty concludes an SFT through a branch office, the LEI of the branch. Until the LEI for branches is endorsed by ESMA, the code of the country where the branch is located shall be reported.	Y	Y	Y	Y
8	Branch of the other counterparty	When the Other Counterparty concludes an SFT through a branch office, the LEI of the branch. Until the LEI for branches is endorsed by ESMA, the code of the country where the branch is located shall be reported.	Y	Y	Y	Y
9	Counterparty side	Identifies whether the reporting counterparty is a collateral provider or a collateral taker in accordance with the Article 4 of the [ITS]	Y	Y	Y	Y

No	Field	Details to be reported	Repo	BSB	SL	ML
10	Entity responsible for the report	<p>In the case where a financial counterparty is responsible for reporting on behalf of the other counterparty in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that counterparty.</p> <p>In the case where a management company is responsible for reporting on behalf of an Undertaking for Collective Investment in Transferable Securities (UCITS) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that management company.</p> <p>In the case where an Alternative Investment Fund Manager (AIFM) is responsible for reporting on behalf of an Alternative Investment Fund (AIF) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that AIFM.</p>	Y	Y	Y	Y
11	Other counterparty	Unique code identifying the entity with which the reporting counterparty concluded the SFT. In case of a private individual a client code shall be used in a consistent manner.	Y	Y	Y	Y
12	Country of the other Counterparty	The code of country where the registered office of the other counterparty is located or country of residence in case that the other counterparty is a natural person.	Y	Y	Y	Y
13	Beneficiary	If the beneficiary of the contract is not a counterparty to this contract, the reporting counterparty has to identify this beneficiary by a unique code or, in case of a private individual, by a client code used in a consistent manner as assigned by the legal entity used by the private individual.	Y	Y	Y	N
14	Tri-party agent	Unique code identifying the third party to which the Reporting Counterparty has outsourced the post-trade processing of an SFT. When no tri-party agent is used, this information shall not be provided.	Y	Y	Y	N

No	Field	Details to be reported	Repo	BSB	SL	ML
15	Broker	The unique code of the entity that acts as intermediary for the reporting counterparty without becoming a counterparty to the SFT itself. For securities lending transactions, broker does not include the agent lender.	Y	Y	Y	N
16	Clearing member	In the case where the trade is cleared, the responsible clearing member shall be identified in this field by a unique code	Y	Y	Y	N
17	CSD participant or indirect participant	The unique code of the - CSD participant or indirect participant of the reporting counterparty In the case where both CSD participant and indirect participant are involved in the transaction, the indirect participant shall be identified in this field. This field is not applicable for commodities.	Y	Y	Y	N
18	Agent lender	The unique code of the agent lender involved in the securities lending transaction	N	N	Y	N

Table 2

### Loan and Collateral Data

No	Field	Details to be reported	Repo	BSB	SL	ML
1	Unique Transaction Identifier (UTI)	The unique reference assigned to the SFT to identify the trade.	Y	Y	Y	Y
2	Report tracking number	In the case of transactions resulting from clearing, the prior UTI, i.e. UTI of original bilateral transaction. The prior-UTI is not required to be reported by counterparties that are CCPs that cleared the SFT. Where an SFT was executed on a trading venue and cleared on the same day, a number generated by the trading venue and unique to that execution.	Y	Y	Y	N

No	Field	Details to be reported	Repo	BSB	SL	ML
3	Event date	Date on which the reportable event pertaining to the SFT and captured by the report took place. In the case of Action Types "Valuation update", "Collateral update", "Reuse update", "Margin update", the date for which the information contained in the report is provided.	Y	Y	Y	Y
4	Type of SFT	Specifies the type of SFT transaction as defined under Article 3(7)-3(10) of Regulation (EU) No 2365/2015	Y	Y	Y	Y
5	Cleared	Indicates, whether central clearing has taken place.	Y	Y	Y	N
6	Clearing timestamp	Time and date when clearing took place.	Y	Y	Y	N
7	CCP	In the case of a contract that has been cleared, the unique code for the CCP that has cleared the contract	Y	Y	Y	N
8	Trading venue	The venue of execution shall be identified by a unique code for this venue. Where a transaction was concluded OTC and the respective instrument is admitted to trading but traded OTC, MIC code 'XOFF' shall be used. Where a transaction was concluded OTC and the respective instrument is not admitted to trading and traded OTC, MIC code 'XXXX' shall be used.	Y	Y	Y	N
9	Master agreement type	Reference to master agreement under which the counterparties concluded a documented SFT.	Y	Y	Y	N
10	Other master agreement type	The name of the Master Agreement, this field should only be filled in where "OTHR" is reported in the Master agreement type field	Y	Y	Y	N
11	Master agreement version	Reference to the year of the master agreement version used for the reported trade, if applicable (e.g. 1992, 2002, etc.)	Y	Y	Y	N
12	Execution timestamp	Date and time when the SFT was executed.	Y	Y	Y	Y



No	Field	Details to be reported	Repo	BSB	SL	ML
13	Value date (Start date)	Date on which the counterparties contractually agree the exchange of cash, securities, or commodities versus collateral for the opening leg (spot leg) of the securities financing transaction.	Y	Y	Y	N
14	Maturity date (End date)	Date on which the counterparties contractually agree the exchange of cash, securities, or commodities versus collateral for the closing leg (forward leg) of the secured financing transaction. This information shall not be reported for open term repos.	Y	Y	Y	N
15	Termination date	Termination date in the case of a full early termination of the reported SFT.	Y	Y	Y	Y
16	Minimum notice period	The minimum number of business days that one of the counterparties has to inform about the termination of the transaction.	Y	N	N	N
17	Earliest call-back date	The earliest date that the cash lender has the right to call back a portion of the funds or to terminate the transaction.	Y	N	N	N
18	General collateral Indicator	Indication whether the secured financing transaction is subject to a general collateral arrangement. In the case of a securities lending transaction, the field refers to the securities provided as a collateral, and not to the security on loan. -‘GENE’ shall be populated for general collateral. General collateral specifies a collateral arrangement for a transaction in which the collateral giver may choose the security to provide as collateral amongst a relatively wide range of securities meeting predefined criteria. -‘SPEC’ shall be populated for specific collateral. Specific collateral specifies a collateral arrangement for a transaction in which the collateral taker requests a specific security commodity (individual ISIN) to be provided by the collateral provider	Y	Y	Y	N
19	DBV indicator	This field specifies whether the transaction was settled using the Delivery-by-Value (DBV) mechanism	Y	N	Y	N

No	Field	Details to be reported	Repo	BSB	SL	ML
20	Method used to provide collateral	Indication whether the collateral is subject to a title transfer collateral arrangement, a securities financial collateral arrangement, or a securities financial with the right of use. Where more than one method was used to provide collateral, the primary collateral arrangement should be specified in this field	Y	N	Y	Y
21	Open term	Indication whether the transaction is open term or, i.e. has no fixed maturity date, or fixed term with a contractually agreed maturity date. 'true' shall be populated for open term transactions, and 'false' for fixed term.	Y	N	Y	N
22	Termination optionality	A code specifying whether the transaction is an evergreen or extendable SFT.	Y	N	Y	N
In the case of margin lending, the attributes listed in fields 23-34 shall be repeated for each currency of the margin loan.						
23	Fixed rate	In the case of repos, the annualized interest rate on the principal amount of the repurchase transaction in accordance with the day count conventions In the case of margin lending, the annualized interest rate on the loan value that the borrower pays to the lender.	Y	N	N	Y
24	Day count convention	The method for calculating the accrued interest on the principal amount for a fixed rate	Y	N	N	Y
25	Floating rate	An indication of the reference interest rate used which is reset at predetermined intervals by reference to a market reference rate, if applicable.	Y	N	N	Y
26	Floating rate reference period - time period	Time period describing reference period of the floating rate.	Y	N	N	Y
27	Floating rate reference period – multiplier	Multiplier of the time period describing reference period of the floating rate.	Y	N	N	Y

No	Field	Details to be reported	Repo	BSB	SL	ML
28	Floating rate payment frequency - time period	Time period describing frequency of payments for the floating rate.	Y	N	N	Y
29	Floating rate payment frequency – multiplier	Multiplier of the time period describing frequency of payments for the floating rate.	Y	N	N	Y
30	Floating rate reset frequency - time period	Time period describing frequency of the floating rate resets.	Y	N	N	Y
31	Floating rate reset frequency - multiplier	Multiplier of the time period describing frequency of the floating rate resets.	Y	N	N	Y
32	Spread	The number of basis points to be added to or subtracted from the floating interest rate in order to determine the interest rate of the loan	Y	N	N	Y
33	Margin lending currency amount	Amount of a margin loan in a given currency	N	N	N	Y
34	Margin lending currency	Currency of the margin loan	N	N	N	Y
Fields 35-36 shall be populated for each floating rate adjustment						
35	Adjusted rate	This reporting attribute specifies the rate as determined by the rate schedule	Y	N	N	N
36	Rate date	This reporting attribute specifies date as of which the rate is effective.	Y	N	N	N
37	Principal amount on value date	Cash value to be settled as of the value date of the transaction.	Y	Y	N	N
38	Principal amount on maturity date	Cash value to be settled as of the maturity date of the transaction.	Y	Y	N	N
39	Principal amount currency	Currency of the principal amount	Y	Y	N	N
40	Type of asset	Indication of the type of asset subject of the SFT	N	N	Y	N
41	Security identifier	Identifier of the security subject of the SFT. This field is not applicable for commodities	N	N	Y	N

No	Field	Details to be reported	Repo	BSB	SL	ML
42	Classification of a security	CFI code of the security subject of the SFT. This field is not applicable for commodities	N	N	Y	N
Where a commodity was subject of the SFT it shall be classified in fields 43-45						
43	Base product	The Base product as specified in the classification of commodities table.	N	N	Y	N
44	Sub - product	The Sub - Product as specified in the classification of commodities table. Field requires a Base product.	N	N	Y	N
45	Further sub - product	The Further sub product as specified in the classification of commodities table. Field requires a Sub product.	N	N	Y	N
46	Quantity or nominal amount	Quantity or nominal amount of the security or commodity subject of the SFT In the case of bond a total nominal amount should be reported in this field (number of bonds multiplied by the face value) In the case of other securities or commodities, a quantity shall be specified in this field	N	N	Y	N
47	Unit of measure	Unit of measure in which the quantity is expressed. This field is applicable to commodities.	N	N	Y	N
48	Currency of nominal amount	In the case where nominal amount is provided, the currency of the nominal amount shall be populated in this field.	N	N	Y	N
49	Security or commodity price	In the case of securities and commodities lending and borrowing, the price of the security or commodity used to calculate the loan value. In the case of buy-sell back, the price of the security or commodity used to calculate the trade amount for the spot leg of the buy-sell back.	N	N	Y	N
50	Price currency	The currency in which the security or commodity price is denominated.	N	N	Y	N
51	Security quality	Code that classifies the credit risk of the security	N	N	Y	N

No	Field	Details to be reported	Repo	BSB	SL	ML
52	Maturity of the security	Maturity of the security This field is not applicable for commodities	N	N	Y	N
53	Jurisdiction of the issuer	Jurisdiction of the issuer of the security. In case of securities issued by a foreign subsidiary, the jurisdiction of the ultimate parent company shall be reported or, if not known, jurisdiction of the subsidiary. This field is not applicable for commodities	N	N	Y	N
54	LEI of the issuer	LEI of the issuer of the security. This field is not applicable for commodities	N	N	Y	N
55	Security type	Code that classifies the type of the security	N	N	Y	N
56	Loan value	This reporting attribute specifies loan value, i.e. the quantity or nominal amount multiplied by the price	N	N	Y	N
57	Market value	Market value of the securities or commodities on loan or borrowed	N	N	Y	N
58	Fixed rebate rate	Fixed interest rate (rate agreed to be paid by the lender for the reinvestment of the cash collateral minus lending fee) paid by the lender of the security or commodity to the borrower (positive rebate rate) or by the borrower to the lender (negative rebate rate) on the balance of the provided cash collateral.	N	N	Y	N
59	Floating rebate rate	An indication of the reference interest rate used to calculate the rebate rate (rate agreed to be paid by the lender for the reinvestment of the cash collateral minus lending fee) paid by the lender of the security or commodity to the borrower (positive rebate rate) or by the borrower to the lender (negative rebate rate) on the balance of the provided cash collateral.	N	N	Y	N
60	Floating rebate rate reference period - time period	Time period describing reference period of the floating rebate rate.	N	N	Y	N

No	Field	Details to be reported	Repo	BSB	SL	ML
61	Floating rebate rate reference period - multiplier	Multiplier of the time period describing reference period of the floating rebate rate.	N	N	Y	N
62	Floating rebate rate payment frequency - time period	Time period describing frequency of payments for the floating rebate rate.	N	N	Y	N
63	Floating rebate rate payment frequency - multiplier	Multiplier of the time period describing frequency of payments for the floating rebate rate.	N	N	Y	N
64	Floating rebate rate reset frequency - time period	Time period describing frequency of the floating rebate rate resets.	N	N	Y	N
65	Floating rebate rate reset frequency - multiplier	Multiplier of the time period describing frequency of the floating rebate rate resets.	N	N	Y	N
66	Spread of the rebate rate	Spread for the floating rebate rate expressed in basis point.	N	N	Y	N
67	Lending fee	Fee that the borrower of the security or commodity pays to the lender.	N	N	Y	N
68	Exclusive arrangements	In the case of securities borrowing and lending, indication whether the borrower has exclusive access to borrow from the lender's securities portfolio. This field is not applicable to commodities.	N	N	Y	N
69	Outstanding margin loan	Total amount of margin loans, in base currency	N	N	N	Y
70	Base currency of outstanding margin loan	The base currency of outstanding margin loans	N	N	N	Y
71	Short market value	Market value of short position, in base currency.	N	N	N	Y
Collateral data						

No	Field	Details to be reported	Repo	BSB	SL	ML
72	Uncollateralised SL flag	Indicates whether the securities lending transaction is uncollateralised This field shall not be used when the counterparties agree to collateralise the trade but the specific allocation of collateral is not yet known.	N	N	Y	N
73	Collateralisation of net exposure	Indicates whether the collateral has been provided for a net exposure, rather than for a single transaction.	Y	Y	Y	N
74	Value date of the collateral	Where trades have been collateralised on a net exposure basis, the latest value date contained in the netting set of SFTs, considering all transactions for which the collateral was provided.	Y	Y	Y	N
Where specific collateral was used, the attributes listed in fields 75-94 shall be repeated for each component of collateral, if applicable						
75	Type of collateral component	Indication of the type of collateral component	Y	Y	Y	Y
Where cash was used as a collateral it shall be described in fields-76-77						
76	Cash collateral amount	Amount of funds provided as collateral for borrowing the securities or commodities.	Y	Y	Y	N
77	Cash collateral currency	Currency of the cash collateral	Y	Y	Y	N
78	Identification of a security used as collateral	Identifier of the security used as collateral. This field is not applicable for commodities	Y	Y	Y	Y
79	Classification of a security used as collateral	CFI code of the security used as collateral. This field is not applicable for commodities	Y	Y	Y	Y
Where a commodity was used as a collateral it shall be classified in fields 80-82						
80	Base product	Base product as specified in the classification of commodities table.	Y	Y	Y	N
81	Sub - product	The sub - product as specified in the classification of commodities table. Field requires a Base product.	Y	Y	Y	N

No	Field	Details to be reported	Repo	BSB	SL	ML
82	Further sub - product	The further sub - product as specified in the classification of commodities table. Field requires a Sub product.	Y	Y	Y	N
83	Collateral quantity or nominal amount	Quantity or nominal amount of the security or commodity used as collateral In the case of bond a total nominal amount should be reported in this field (number of bonds multiplied by the face value) In the case of other securities or commodities, a quantity shall be specified in this field	Y	Y	Y	Y
84	Collateral unit of measure	Unit of measure in which the collateral quantity is expressed. This field is applicable to commodities.	Y	Y	Y	N
85	Currency of collateral nominal amount	In the case where collateral nominal amount is provided, the currency of the nominal amount shall be populated in this field.	Y	Y	Y	Y
86	Price currency	Currency of the price of the collateral component	Y	Y	Y	Y
87	Price per unit	Price of unit of collateral component, including accrued interest for interest-bearing securities, used to value the security or commodity .	Y	Y	Y	Y
88	Collateral market value	Fair value of the individual collateral component expressed in price currency.	Y	Y	Y	Y
89	Haircut or margin	For repos and buy-sell backs: collateral haircut, a risk control measure applied to underlying collateral at ISIN level whereby the value of that underlying collateral is calculated as the market value of the assets reduced by a certain percentage. For securities lending: collateral haircut, a risk control measure applied to underlying collateral applied either at ISIN or portfolio-level whereby the value of that underlying collateral is calculated as the market value of the assets reduced by a certain percentage For margin lending: margin requirement applied to the entire collateral portfolio	Y	Y	Y	Y



No	Field	Details to be reported	Repo	BSB	SL	ML
		held in a client's prime brokerage account. Only actual values, as opposed to estimated or default values are to be reported for this attribute.				
90	Collateral quality	Code that classifies the risk of the security used as collateral	Y	Y	Y	Y
91	Maturity of the security	Maturity of the security used as collateral, This field is not applicable for commodities	Y	Y	Y	Y
92	Jurisdiction of the issuer	Jurisdiction of the issuer of the security used as collateral. In case of securities issued by a foreign subsidiary, the jurisdiction of the ultimate parent company shall be reported or, if not known, jurisdiction of the subsidiary. This field is not applicable for commodities	Y	Y	Y	Y
93	LEI of the issuer	LEI of the issuer of the security used as collateral. This field is not applicable for commodities	Y	Y	Y	Y
94	Collateral type	Code that classifies the type of the security used as collateral				
95	Availability for collateral reuse	Indication whether the collateral taker can reuse the securities provided as a collateral	Y	Y	Y	Y
Field 96 shall be populated in the case where collateral basket was used. The explicit collateral allocation for SFTs transacted against a collateral pool should be reported in fields 75-94 when available						
96	Collateral basket identifier	If the collateral basket can be identified with an ISIN, the ISIN of the collateral basket- If the collateral basket cannot be identified with an ISIN, this field should be populated with 'NTAV'.	Y	Y	Y	N
97	Portfolio code	If the transaction is cleared and is included in a portfolio of transactions for which margins are exchanged, this portfolio should be identified by a unique code determined by the reporting counterparty. If the portfolio of transactions includes also derivative contracts reportable	Y	Y	Y	N

No	Field	Details to be reported	Repo	BSB	SL	ML
		under EMIR, the portfolio code should be the same as reported under EMIR.				
98	Action type	<p>Whether the report contains:</p> <ul style="list-style-type: none"> <li>- a SFT reported for the first time, in which case it will be identified as 'new';</li> <li>- a modification of a previously reported SFT in which case it will be identified as 'Modification'. This includes an update to a previous report that is showing a position in order to reflect new trades included in that position;</li> <li>- a valuation of the security or commodity subject to a securities or commodities lending transaction in which case it will be identified as 'Valuation Update'</li> <li>- a modification of the details of collateral data, including its valuation, in which case it will be identified as "Collateral update",</li> <li>- a cancellation of a wrongly submitted entire report in case the SFT never came into existence or was not subject to SFTR reporting requirements but was reported to a trade repository by mistake, in which case, it will be identified as 'error';</li> <li>- a previously submitted report contains erroneous data fields, in which case the report correcting the erroneous data fields of the previous report shall be identified as 'correction';</li> <li>- a termination of an open term SFT or an early termination of a fixed term SFT, in which case it will be identified as 'termination /early termination';</li> <li>- a SFT that is to be reported as a new trade and also included in a separate position report on the same day, in which case it will be identified as a "position component".</li> </ul>	Y	Y	Y	Y

No	Field	Details to be reported	Repo	BSB	SL	ML
99	Level	Indication whether the report is done at trade or position level. Position level report can be used only as a supplement to trade level reporting to report post-trade events and only if the individual trades in fungible products have been replaced by the position.	Y	Y	Y	N

Table 3

**Margin Data**

No	Field	Details to be reported	Repo	BSB	SL	ML
1	Reporting timestamp	Date and time of submission of the report to the trade repository.	Y	Y	Y	N
2	Event date	Date on which the reportable event pertaining to the SFT and captured by the report took place. In the case of Action Types "Valuation update", "Collateral update", "Reuse update", "Margin update", the date for which the information contained in the report is provided.	Y	Y	Y	N
3	Report submitting entity	Unique code identifying the entity which submits the report. In the case where submission of the report has been delegated to a third party or to the other counterparty, a unique code identifying that entity.	Y	Y	Y	N
4	Reporting Counterparty	Unique code identifying the reporting counterparty	Y	Y	Y	N
5	Entity responsible for the report	In the case where a financial counterparty is responsible for reporting on behalf of the other counterparty in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that counterparty. In the case where a management company is responsible for reporting on behalf of an Undertaking for Collective Investment in Transferable Securities (UCITS) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that	Y	Y	Y	Y

No	Field	Details to be reported	Repo	BSB	SL	ML
		management company. In the case where an Alternative Investment Fund Manager (AIFM) is responsible for reporting on behalf of an Alternative Investment Fund (AIF) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that AIFM.				
6	Other counterparty	Unique code identifying the entity with which the reporting counterparty concluded the SFT	Y	Y	Y	N
7	Portfolio code	The portfolio of transactions for which margins are exchanged should be identified by a unique code determined by the reporting counterparty. If the portfolio of transactions includes also derivative contracts reportable under EMIR, the portfolio code should be the same as reported under EMIR.	Y	Y	Y	N
8	Initial margin posted	Value of the initial margin posted by the reporting counterparty to the other counterparty. Where initial margin is posted on a portfolio basis, this field should include the overall value of initial margin posted for the portfolio.	Y	Y	Y	N
9	Currency of the initial margin posted	Specify the currency of the initial margin posted.	Y	Y	Y	N
10	Variation margin posted	Value of the variation margin posted, including cash settled, by the reporting counterparty to the other counterparty. Where variation margin is posted on a portfolio basis, this field should include the overall value of variation margin posted for the portfolio.	Y	Y	Y	N
11	Currency of the variation margins posted	Specify the currency of variation margin posted.	Y	Y	Y	N
12	Initial margin received	Value of the initial margin received by the reporting counterparty from the other counterparty. Where initial margin is received on a portfolio basis, this field should include the overall value of initial margin received for the portfolio.	Y	Y	Y	N

No	Field	Details to be reported	Repo	BSB	SL	ML
13	Currency of the initial margin received	Specify the currency of the initial margin received.	Y	Y	Y	N
14	Variation margin received	Value of the variation margin received, including cash settled, by the reporting counterparty from the other counterparty. Where variation margin is received on a portfolio basis, this field should include the overall value of variation margin received for the portfolio.	Y	Y	Y	N
15	Currency of the variation margins received	Specify the currency of the variation margin received.	Y	Y	Y	N
16	Excess collateral posted	Value of collateral posted in excess of the required collateral.	Y	Y	Y	N
17	Currency of the excess collateral posted	Specify the currency of the excess collateral posted.	Y	Y	Y	N
18	Excess collateral received	Value of collateral received in excess of the required collateral	Y	Y	Y	N
19	Currency of the excess collateral received	Specify the currency of the excess collateral received.	Y	Y	Y	N
20	Action type	Whether the report contains: - a new margin balance, in which case it will be identified as 'new'; - a modification of the details of the margins in which case it will be identified as 'Margin update' - a cancellation of a wrongly submitted entire report , in which case, it will be identified as 'error'; - a previously submitted report contains erroneous data fields, in which case the report correcting the erroneous data fields of the previous report shall be identified as 'correction';	Y	Y	Y	N

Table 4

**Re-use, Cash Reinvestment and Funding Sources Data**

No	Field	Details to be reported	Repo	BSB	SL	ML
1	Reporting timestamp	Date and time of submission of the report to the trade repository.	Y	Y	Y	Y
2	Event date	Date on which the reportable event pertaining to the SFT and captured by the report took place. In the case of Action Types "Valuation update", "Collateral update", "Reuse update", "Margin update", the date for which the information contained in the report is provided.	Y	Y	Y	Y
3	Report submitting entity	Unique code identifying the entity which submits the report. In the case where submission of the report has been delegated to a third party or to the other counterparty, a unique code identifying that entity.	Y	Y	Y	Y
4	Reporting counterparty	Unique code identifying the reporting counterparty	Y	Y	Y	Y
5	Entity responsible for the report	<p>In the case where a financial counterparty is responsible for reporting on behalf of the other counterparty in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that counterparty.</p> <p>In the case where a management company is responsible for reporting on behalf of an Undertaking for Collective Investment in Transferable Securities (UCITS) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that management company.</p> <p>In the case where an Alternative Investment Fund Manager (AIFM) is responsible for reporting on behalf of an Alternative Investment Fund (AIF) in accordance with Article 4(3) of Regulation (EU) No 2365/2015, the unique code identifying that AIFM.</p>	Y	Y	Y	Y
6	Type of collateral component	Indication of the type of collateral component	Y	Y	Y	Y

No	Field	Details to be reported	Repo	BSB	SL	ML
Fields 7-9 should be repeatable for each security						
7	Collateral component	Identifier of the security used as collateral.	Y	Y	Y	Y
8	Value of reused collateral	Total value of the collateral reused when it can be defined at SFT transaction level.	Y	Y	Y	Y
9	Estimated reuse of collateral	In the case when the actual value of reused collateral is unknown or cannot be calculated, an estimate value of reuse at individual financial instrument level calculated in accordance with the reuse measure established by FSB.	Y	Y	Y	Y
10	Reinvestment Rate	The average interest rate received on cash collateral reinvestment by the lender for reinvestment of cash collateral	N	N	Y	N
Fields 11-13 should be repeated for each investment which cash collateral has been re-invested in and each currency.						
11	Re-invested cash	Determines the type of re-investment	N	N	Y	N
12	Re-invested cash amount	Amount of the re-invested cash in a given currency	N	N	Y	N
13	Re-invested cash currency	Currency of the re-invested cash	N	N	Y	N
In the case of margin lending transactions, the counterparty should report fields 14-15. Information in these fields should be provided at entity level.						
14	Funding sources	Funding sources used to finance margin loans.	N	N	N	Y
15	Market value of the funding sources	Market value of funding sources referenced above, in base currency	N	N	N	Y
16	Action type	Whether the report contains: - a new reuse balance, in which case it will be identified as 'New'; - a modification of the details of the reuse in which case it will be identified as 'reuse update' - a cancellation of a wrongly submitted entire report , in which case, it will be identified as 'error'; - a previously submitted report contains erroneous data fields, in which case the	Y	Y	Y	Y

No	Field	Details to be reported	Repo	BSB	SL	ML
		report correcting the erroneous data fields of the previous report shall be identified as 'Correction';				



## **15 Annex VIII – Draft RTS on operational standards for data collection, data aggregation and comparison, public data and details of SFTs**

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

**supplementing Regulation (EU) 2015/2365 of the European Parliament and Council on the transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 with regard to regulatory technical standards specifying the operational standards for data collection by trade repositories and aggregation and comparison of data across repositories and the details of aggregate positions to be published and of SFTs to which entities shall have access**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012<sup>81</sup>, and in particular Article 5(7)(a) and 12(3) thereof,

Whereas:

- (1) In order to ensure that entities listed in Article 12(2) of Regulation (EU) 2015/2365 have direct and immediate access to details of SFTs in a harmonised and consistent manner, this Regulation prescribes the format in which this access to data should be provided. This format includes reference to an ISO standard that is widely used in the financial industry. XML format templates based on ISO 20022 methodology should therefore be used for all output reports and exchanges to ensure comparability and aggregation of data across trade repositories. Access to details of SFTs for certain entities may be facilitated by virtue of them having delegated one of their tasks or responsibilities to the European Securities and Markets Authority (ESMA) under Article 28 of ESMA's founding legislation, Regulation (EU) No 1095/2010. Their access to any required data should still however be immediate
- (2) Article 80(4) of Regulation 648/2012 establishes a requirement for trade repositories to calculate positions in derivatives. Pursuant to Article 4(6) of Regulation (EU) 2015/2365,

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<sup>81</sup> OJ L 337, 23.12.2015, p. 1

the reference to derivative shall be construed as reference to SFTs. Positions are essential to allow authorities to timely access data on exposures between counterparties and to determine potential sources of systemic or non-systemic risks to financial stability. The authorities should have access to those positions based on their responsibilities and mandates.

- (3) In order to ensure the correctness, completeness, integrity, and high quality of the details of SFTs that a trade repository collects and makes available to the entities listed under Article 12(2) of Regulation (EU) 2015/2365, this Regulation specifies a number of procedural steps that it should take to validate the data received. These verification checks relate to the entity submitting the report and to the details of the SFT reported, including the verification of the extent to which they relate to an SFT report that has already been submitted.
- (4) A further process that is necessary to ensure the high quality of the data collected by a trade repository is that of reconciliation. This process involves a trade repository, having received a report from a counterparty to an SFT, identifying the trade repository that has received the corresponding report relating to the other counterparty to the SFT. The trade repositories then seek to match the respective details of the SFT that they have received. This Regulation specifies a standardised process that will enable trade repositories to conduct reconciliation in a consistent manner and will reduce the risks of details of SFTs not being reconciled. The reconciliation process will apply where one trade repository has received reports from both counterparties to an SFT.
- (5) Certain details of SFTs, however, might not be identical due to the specificities of the technology systems used by the entities submitting the report. Certain tolerances therefore need to be applied, so that minor differences in the reported details of SFTs do not prevent the authorities from analysing the data with an adequate level of confidence.
- (6) Furthermore, in addition to setting out strict rules on the fields that are reconciled and on the tolerances that are applied, there is a learning curve and entities improve their reporting both in terms of reduction of number of rejected reports and in terms of reconciled reports. Taking into account these considerations, and to prevent the accumulation of non-reconciled trades, while ensuring the access by authorities to high quality data, which has been subject to consistent validation and reconciliation processes, it is indispensable to firstly reconcile a reduced set of fields, and to reconcile the full set of details of SFTs once the report submitting entities have improved the quality of the reported data.
- (7) Any party that has reported details of an SFT should be able to have access to certain information, on a daily basis, in respect of those reports, such as the result of the verification of those, as well as the progress of the reconciliation of the reported data, so that it can monitor its compliance with its reporting obligations under Regulation (EU) 2015/2365. This Regulation therefore specifies information that a trade repository should make available to an entity at the end of each working day.
- (8) To provide adequate level of transparency to the public with regard to SFTs, this Regulation specifies the frequency and details of a trade repository's publication of aggregate position data pursuant to Regulation (EU) 2015/2365 in a manner that builds

on the related framework provided for derivatives contracts by Regulation (EU) No 648/2012. The criteria based on which data should be aggregated would allow the general public to understand the functioning of the SFT markets without undermining the confidentiality of the data reported to trade repositories.

- (9) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (10) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

*Details of SFTs for authorities*

*Article 1*

**Details of SFTs to be provided to authorities**

A trade repository shall ensure that the entities listed in Article 12(2) of Regulation (EU) 2015/2365 have direct and immediate access to the details of SFTs, determined in accordance with Articles of [please insert reference to RTS under Article 12(3)(c) of SFTR], and to the positions data determined in accordance with Article 2. Access to the details shall be provided in an electronic and machine-readable form and a common XML template in accordance with ISO 20022 methodology. Direct and immediate access includes where any of those entities access the details of SFTs or positions thereof, pursuant to a delegation of a task to ESMA made under Article 28 of Regulation (EU) No 1095/2010.

*Article 2*

**Details of SFT positions to be provided to authorities**

1. A trade repository shall ensure that the entities listed in paragraph 2 of Article 2 of Regulation (EU) 2015/2365 have access, in accordance with the access to data defined under [please insert reference to Article 1 of RTS under Article 12(3)(c) of SFTR], to position level data on the exposures between reporting counterparties in an electronic and machine readable form and a common XML template in accordance with ISO 20022 methodology based on the following details:
  - a. Reconciliation category, as per Table 1 of the Annex to this Regulation;
  - b. Type of SFT;
  - c. Status of clearing;
  - d. On or off trading venue;
  - e. Type of asset class of the collateral (cash, equities, corporate bonds, government bonds, etc.);
  - f. Currency of the cash leg;
  - g. Maturity bucket;

- h. Haircut bucket;
  - i. TRs to which the other counterparty reported the SFT.
- 2. A trade repository shall ensure that the entities listed in Article 12(2) of Regulation 2015/2365 have access to the data in paragraph 1 at the earliest opportunity and no later than the working day following the receipt of an SFT report pursuant to Article 4(1) of Regulation 2015/2365.
- 3. A trade repository shall ensure that the entities listed in Article 12(2) of Regulation 2015/2365 have access to aggregate level data, pursuant to the access to data defined under [please insert reference to Article 1 of RTS under Article 12(3)(c) of SFTR], calculated in accordance with international standards on SFT data collection and aggregation.

#### *Data collection*

#### *Article 3*

#### **Data validations by trade repositories**

- 1. In the course of collecting data a trade repository shall validate the data by verifying:
  - a. the identity of a report submitting entity of an SFT report, as defined in Field 2 of Table 1 in [insert reference to Annex of RTS];
  - b. the correctness of the XML template in accordance with ISO 20022 methodology that was used to report an SFT;
  - c. that a report submitting entity of an SFT is duly authorised to report on behalf of the reporting counterparty. A trade repository shall not carry out this verification where the report submitting entity is the entity responsible to report under paragraph 3 of Article 4 of Regulation (EU) 2015/2365;
  - d. that an SFT report does not purport to relate to the modification of an SFT that has not been previously reported or an SFT that was previously reported as cancelled;
  - e. that the SFT has not already been reported;
  - f. that an SFT report does not include the action type “New” in respect of an SFT that has been previously reported;

- g. that an SFT report does not include action type “Position component” for a UTI that has been previously reported;
  - h. that an SFT report does not purport to modify the details of the reporting counterparty or of the other counterparty to a previously reported SFT;
  - i. that an SFT report does not include a modification of an SFT that specifies a value date later than the reported maturity date of the transaction;
  - j. the correctness and completeness of the details of an SFT reported.
- 2. A trade repository shall verify whether information relating to collateral has been reported or not in fields 73 to 96 for SFTs where field 72 “Uncollateralised SL flag” of Table 2 to the Annex of Regulation [please insert reference to the ITS under Article 4(10)] is reported as “false” and shall notify accordingly the reporting counterparty, entity responsible for reporting and report submitting entity, as applicable.
- 3. A trade repository shall reject an SFT report that does not comply with at least one of the validations set out in paragraph 1 and assign to it one of the categories of rejection set out in Table 2 of the Annex to this Regulation.
- 4. No later than sixty minutes after the reception by a trade repository of an SFT report, a trade repository shall provide the reporting counterparty, the entity responsible for reporting and report submitting entity, as applicable, with detailed information on the results of the data validations performed under paragraph 1. A trade repository shall provide these results in an XML template in accordance with ISO 20022 methodology. A trade repository shall identify, where relevant, the specific reasons for rejection of an SFT report.

#### *Article 4*

##### **Reconciliation of data by trade repositories**

- 1. A trade repository shall seek to reconcile a reported SFT by undertaking the steps set out in paragraph 2 where all of the following conditions are met:
  - a. the trade repository has completed the checks set out in paragraphs 1 and 2 of Article 3;
  - b. both counterparties to the reported SFT have a reporting obligation; and
  - c. the trade repository has not received a subsequent report in respect of the reported SFT with the action type “Error”.

2. Where all the conditions in paragraph 1 are met, a trade repository shall undertake the following steps, while using the latest reported value for each of the fields detailed in Table 1 of the Annex to this Regulation:
- a. A trade repository shall ascertain whether it has received an SFT report relating to the reported SFT submitted by or on behalf of the other counterparty to the SFT;
  - b. Where a trade repository ascertains that it has not received an SFT report as described in point a, it shall attempt to identify a trade repository which has received such an SFT report by communicating to all registered trade repositories the values of the following fields of the reported SFT: field “Unique Transaction Identifier”, field “Reporting counterparty”, field “Other counterparty” and field “Master agreement type”;
  - c. Where a trade repository determines that another trade repository has received an SFT report as described in point a, the trade repository shall exchange with it the details of the reported SFT in the format prescribed by paragraph d;
  - d. A trade repository shall exchange the details of a reported SFT that it is seeking to reconcile with another trade repository in XML template in accordance with ISO 20022 methodology;
  - e. Subject to point g, a trade repository shall treat a reported SFT as reconciled where its details match the corresponding details of an SFT report described in point a.
  - f. A trade repository shall seek to match separately the fields pertaining to the loan data and the fields pertaining to the collateral data of a reported SFT in accordance with the tolerance limits defined in Table 1 of the Annex, taking into account the relevant dates of application;
  - g. A trade repository shall conclude the steps in points a to f of this paragraph at the earliest opportunity and shall take no such steps after 18:00 Universal Coordinated Time on a given working day;
  - h. A trade repository shall subsequently assign to each reported SFT a reconciliation category, as set out in Table 3 of the Annex to this Regulation.

- i. Where a trade repository cannot reconcile a reported SFT, it shall seek to match the details of that reported SFT on the following working day. The trade repository shall no longer seek to reconcile the reported SFT thirty calendar days after the reported maturity of the SFT or after the trade repository has received a report relating to it with Action type “C” or “P”.
3. A trade repository shall confirm at the end of each working day with each trade repository with which it has reconciled reported SFTs the total number of reconciled, reported SFTs.
4. No later than sixty minutes after the conclusion of the reconciliation process as set out in point h of paragraph 1, a trade repository shall provide the reporting counterparty, entity responsible for reporting and report submitting entity, as applicable, with the results of the reconciliation process performed by it on the reported SFTs. A trade repository shall provide these results in an XML template in accordance with ISO 20022 methodology, including information on the fields that have not been reconciled. A trade repository shall assign a reconciliation category to each SFT, as detailed in Table 3 of the Annex to this Regulation.

## *Article 5*

### **End-of-day response mechanisms**

A trade repository shall make available by the end of each working day at least in the XML template in accordance with ISO 20022 methodology the following detailed information to the relevant SFTs to the reporting counterparty, entity responsible for reporting and report submitting entity, as applicable:

- a. Information regarding the SFTs reported during the day;
- b. Information regarding the latest trade states of the SFTs that have not matured or for which reports with Action types “E”, “C” or “P”, have not been made;
- c. Information regarding the UTIs of those SFTs where field 72 “Uncollateralised SL flag” of Table 2 to the Annex of Regulation [please insert reference to the ITS under Article 4(10)] is reported as “false” and information pertaining to the collateral in fields 73 to 96 Table 2 to the



Annex of Regulation [please insert reference to the ITS under Article 4(10)] has not yet been reported;

- d. Information regarding the rejections of SFTs that have occurred during the day;
- e. Information regarding the reconciliation status of all reported SFTs, except those SFTs that have expired or for which SFT reports with Action type “C” or “P” were received more than a month before the date on which the reconciliation process takes place;

### *Article 6*

#### **Publication of aggregate position data**

1. A trade repository shall publish aggregate position data on its website on a weekly basis no later than Tuesday noon for SFTs reported by 23:59:59 UTC of the previous Friday. A trade repository shall publish this data in accordance with the aggregations detailed in the following paragraphs.
2. A trade repository shall publish aggregate position data for all SFTs reported with action type “New” between 00:00:00 UTC of Saturday and 23:59:59 UTC of Friday. The details of these SFT reports shall be aggregated on the basis of the following criteria:
  - a. the location of the reporting counterparty or, where applicable, of the relevant branch;
  - b. the location of the other counterparty or, where applicable, of the relevant branch;
  - c. the type of SFT;
  - d. the SFT’s reconciliation category, as defined in Table 2 of the SFT;
  - e. the on and off-trading venue SFT status, such as XXXX, XOFF, EEA MIC and non-EEA MIC;
  - f. whether the SFT was cleared or not;
  - g. the method by which the collateral was transferred
  - h. each index used as reference in an SFT, traded on venue of execution different from “XXXX”, where the aggregate nominal amount reported to

the TRs in index is greater than 5 billion EUR and there are at least six different counterparties that have reported the relevant SFTs to the TR.

3. A trade repository shall publish aggregate position data for all SFTs that have not matured or for which reports with action types “E”, “C”, “P”, as of 23:59:59 UTC of Friday, have not been received. The details of these SFT reports shall be aggregated on the basis of the following criteria
  - a. the location of the reporting counterparty or, where applicable, of the relevant branch;
  - b. the location of the other counterparty or, where applicable, of the relevant branch;
  - c. the type of SFT;
  - d. the SFT’s reconciliation category, as defined in Table 2 of the SFT;
  - e. the on and off-trading venue SFT status, such as XXXX, XOFF, EEA MIC and non-EEA MIC;
  - f. whether the SFT was cleared or not;
  - g. the method by which the collateral was transferred
  - h. each index used as reference in an SFT, traded on venue of execution different from “XXXX”, where the aggregate nominal amount reported to the TRs in index is greater than 5 billion EUR and there are at least six different counterparties that have reported the relevant SFTs to the TR.
4. A trade repository shall quantify the aggregate position data published pursuant to paragraphs 1, 2 and 3 in respect of the relevant:
  - a. principal amount of repurchase agreements, of buy-sell back or sell-buy back transactions, aggregate quantity of securities or commodities lent or borrowed and amount of margin loans;
  - b. number of UTIs pertaining to the relevant SFTs;
  - c. market value of the collateral.
5. A trade repository shall publish all aggregate position data in euro. A trade repository shall use the exchange rates published in the ECB website as of the previous Friday for the purposes of aggregation of public data.

6. A trade repository shall ensure that the aggregate position data is published in a tabular format as included in Annex II to this Regulation and that allows the data to be downloaded.
7. A trade repository shall keep on its website the aggregate position data it has published at least 52 weeks.

### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all member States.

Done at Brussels,

## Annex I

Table 1 Reconciliation fields, tolerance levels and start date

Table	Section	Field	Tolerance	Date
Counterparty data	NA	Reporting Counterparty	No	Article 33(2)(a)(i)
Counterparty data	NA	Counterparty Side	No	Article 33(2)(a)(i)
Counterparty data	NA	Other counterparty	No	Article 33(2)(a)(i)
Transaction data	Loan	Unique Transaction Identifier (UTI)	No	Article 33(2)(a)(i)
Transaction data	Loan	Termination date	No	Article 33(2)(a)(i)
Transaction data	Loan	Type of SFT	No	Article 33(2)(a)(i)
Transaction data	Loan	Cleared	No	Article 33(2)(a)(i)
Transaction data	Loan	Clearing Timestamp	one hour	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	CCP	No	Article 33(2)(a)(i)
Transaction data	Loan	Trading venue	No	Article 33(2)(a)(i)
Transaction data	Loan	Master agreement type	No	Article 33(2)(a)(i)
Transaction data	Loan	Execution timestamp	one hour	Article 33(2)(a)(i)
Transaction data	Loan	Value Date (Start Date)	No	Article 33(2)(a)(i)
Transaction data	Loan	Maturity Date (End Date)	No	Article 33(2)(a)(i)
Transaction data	Loan	Termination Date	No	Article 33(2)(a)(i)
Transaction data	Loan	Minimum notice period	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Earliest Call-back Date	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	General Collateral Indicator	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	DBV Indicator	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Method used to provide collateral	No	Article 33(2)(a)(i)
Transaction data	Loan	Open term	No	Article 33(2)(a)(i)
Transaction data	Loan	Termination optionality	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Fixed rate	Up to third digit after decimal	Article 33(2)(a)(i)
Transaction data	Loan	Day count convention	No	Article 33(2)(a)(i)
Transaction data	Loan	Floating rate	No	Article 33(2)(a)(i)

Table	Section	Field	Tolerance	Date
Transaction data	Loan	Floating rate reference period - time period	No	Article 33(2)(a)(i)
Transaction data	Loan	Floating rate reference period – multiplier	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Floating rate payment frequency - time period	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Floating rate payment frequency – multiplier	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Floating rate reset frequency - time period	No	Article 33(2)(a)(i)
Transaction data	Loan	Floating rate reset frequency – multiplier	No	Article 33(2)(a)(i)
Transaction data	Loan	Spread	Up to third digit after decimal	Article 33(2)(a)(i)
Transaction data	Loan	Margin lending currency amount	No	Article 33(2)(a)(i)
Transaction data	Loan	Margin lending currency	No	Article 33(2)(a)(i)
Transaction data	Loan	Adjusted rate	Up to third digit after decimal	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Rate Date	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Principal amount on value date	No	Article 33(2)(a)(i)
Transaction data	Loan	Principal amount on maturity date	0.0005%	Article 33(2)(a)(i)
Transaction data	Loan	Principal amount currency	No	Article 33(2)(a)(i)
Transaction data	Loan	Type of asset	No	Article 33(2)(a)(i)
Transaction data	Loan	Security identifier	No	Article 33(2)(a)(i)
Transaction data	Loan	Classification of a security	No	Article 33(2)(a)(i)
Transaction data	Loan	Base product	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Sub - product	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Further sub - product	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Quantity or nominal amount	No	Article 33(2)(a)(i)
Transaction data	Loan	Unit of measure	No	Article 33(2)(a)(iv) + 24 months

Table	Section	Field	Tolerance	Date
Transaction data	Loan	Currency of nominal amount	No	Article 33(2)(a)(i)
Transaction data	Loan	Security or commodity price	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Price currency	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Security quality	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Maturity of the security	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Jurisdiction of the issuer	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	LEI of the issuer	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Security type	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Loan value	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Market value	0.0005%	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Fixed rebate rate	Up to third digit after decimal	Article 33(2)(a)(i)
Transaction data	Loan	Floating rebate rate	Up to third digit after decimal	Article 33(2)(a)(i)
Transaction data	Loan	Floating rebate rate reference period - time period	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Floating rebate rate reference period - multiplier	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Floating rebate rate payment frequency - time period	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Floating rebate rate payment frequency - multiplier	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Floating rebate rate reset frequency - time period	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Floating rebate rate reset frequency - multiplier	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Spread of the rebate rate	Up to third digit after decimal	Article 33(2)(a)(i)
Transaction data	Loan	Lending fee	No	Article 33(2)(a)(i)

Table	Section	Field	Tolerance	Date
Transaction data	Loan	Exclusive arrangements	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Loan	Outstanding margin loan	No	Article 33(2)(a)(i)
Transaction data	Loan	Base currency of outstanding loan	No	Article 33(2)(a)(i)
Transaction data	Loan	Short market value	0.0005%	Article 33(2)(a)(i)
Transaction data	Collateral	Uncollateralised SL flag	No	Article 33(2)(a)(i)
Transaction data	Collateral	Collateralisation of net exposure	No	Article 33(2)(a)(i)
Transaction data	Collateral	Value date of collateral	No	Article 33(2)(a)(i)
Transaction data	Collateral	Type of collateral component	No	Article 33(2)(a)(i)
Transaction data	Collateral	Cash Collateral Amount	No	Article 33(2)(a)(i)
Transaction data	Collateral	Cash collateral currency	No	Article 33(2)(a)(i)
Transaction data	Collateral	Identification of a security used as collateral	No	Article 33(2)(a)(i)
Transaction data	Collateral	Classification of a security used as collateral	No	Article 33(2)(a)(i)
Transaction data	Collateral	Base product	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Collateral	Sub – product	No	Article 33(2)(a)(iv) + 24 months
Transaction data	Collateral	Further sub – product	No	Article 33(2)(a)(iv) + 24 months)
Transaction data	Collateral	Collateral quantity or nominal amount	No	Article 33(2)(a)(i)
Transaction data	Collateral	Collateral unit of measure	No	Article 33(2)(a)(i)
Transaction data	Collateral	Currency of collateral nominal amount	No	Article 33(2)(a)(i)
Transaction data	Collateral	Price currency	No	Article 33(2)(a)(i)
Transaction data	Collateral	Price per unit	No	Article 33(2)(a)(i)
Transaction data	Collateral	Collateral market value	0.0005%	Article 33(2)(a)(i)
Transaction data	Collateral	Haircut or margin	Up to third digit after decimal	Article 33(2)(a)(i)
Transaction data	Collateral	Collateral quality	No	Article 33(2)(a)(i)
Transaction data	Collateral	Maturity of the security	No	Article 33(2)(a)(i)
Transaction data	Collateral	Jurisdiction of the issuer	No	Article 33(2)(a)(i)
Transaction data	Collateral	LEI of the issuer	No	Article 33(2)(a)(i)

Table	Section	Field	Tolerance	Date
Transaction data	Collateral	Collateral type	No	Article 33(2)(a)(i)
Transaction data	Collateral	Availability for collateral Re-Use	No	Article 33(2)(a)(i)
Transaction data	Collateral	Collateral basket identifier	No	Article 33(2)(a)(i)
Transaction data	Loan	Level	No	Article 33(2)(a)(i)



Table 2

Rejection categories	Reason
Schema	– the SFT has been rejected, because of non-compliant schema
Permission	– the SFT has been rejected, because the report submitting entity is not permitted to report on behalf of the reporting counterparty
Logical	– the SFT has been rejected, because the action type for the SFT is not logically correct
Business	– the SFT is rejected, because the SFT was not compliant with one or more content validations.

Table 3

Reconciliation categories	Allowable values
Reporting type	Single-sided/Dual-sided
Reporting requirement for both counterparties	Yes/No
Pairing Status	Paired/Unpaired
Loan reconciliation status	Reconciled/Not reconciled
Collateral reconciliation status	Reconciled/Not reconciled
Further modifications	Yes/No

Annex II  
Table 1 Public data

<b>Table A. Aggregation</b>												
Date	TR	Aggregation Type	Venue type	Location of reporting counterparty	Location of the other counterparty	Reconciliation	Type of SFT	Cleared	Collateral transfer method	Aggregate Amount lent	Aggregate No transactions	Aggregate value of collateral
20161007	EU TR	Reported	XXXX	EEA	EEA	Dual-sided, loan reconciled, collateral not reconciled	Repo	Yes	TTCA	...		...
...	...	Outstanding	XOFF	Non-EEA	Non-EEA	Dual-sided, loan reconciled, collateral reconciled	BSB/SBB	No	SICA	...		...
...	...	...	EEA MIC	...	...	Single-sided EEA, loan reconciled, collateral reconciled	Securities or commodities lending and borrowing	...	SIUR	...		...
...	...	...	Non-EEA MIC	...	...	...	Margin lending	...		...		...
...	...	...	...	...	...	...	...	...		...		...

## 16 Annex IX – Draft RTS on access levels and terms of use under SFTR

COMMISSION DELEGATED REGULATION (EU) No .../...

of [ ]

**supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 with regard to specifying the details of information to which, and the terms on conditions under which, entities should have access**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank,

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, and particular paragraphs (c) and (d) of Article 12 (3) thereof,

Whereas:

- (1) Having access to all details of SFTs included in the relevant tables of the Annex to [insert reference to the Annex to RTS on reporting under Article 4], including the details of SFTs that have been rejected by the trade repository in accordance with [insert reference to RTS on data collection] or the relevant details following the performance of the reconciliation of SFTs is of utmost importance to allow the authorities listed in Article 12(2) of Regulation EU) 2015/2365 to comply with their responsibilities and mandates.
- (2) To ensure achievement of the objectives of Regulation (EU) 2015/2365 related to the supervision of systemic risks and build-up of leverage in the financial system, it is essential that a trade repository is able to accurately identify the relevant counterparties, their subsidiaries and holding companies and provide information on their transactions to the relevant authorities entitled to have access. The trade repositories should rely on the relationship data of subsidiaries and groups collected by the Global Legal Entity Identifier System, where available.

- (3) Many of the entities that are entitled to access details of SFTs in trade repositories have a number of responsibilities and mandates that would permit them to access these details. In order to establish efficient access to data, a trade repository should ensure that each authority has a single access to data irrespective of its different responsibilities and mandates it has.
- (4) The responsibilities and mandates of an authority are essential to determine its access levels. The responsibilities and mandates are determined by Union and/or national legislation, where all the specific aspects relating to entities, products, transactions, infrastructures or assets are defined and the jurisdiction of an authority is circumscribed to a particular territory, such as a Member State, the euro area or the Union. The trade repositories should ensure that the authorities have direct and immediate access to all the data that they need in order to be able to fulfil their responsibilities and mandates.
- (5) The European Securities and Markets Authority (ESMA) should have access to all the transaction level data held by trade repositories, for the purpose of trade repository supervision, to be able to make information requests, take appropriate supervisory measures, also monitor whether registration as a trade repository should be kept or withdrawn as well as to be able to fulfil the rest of its responsibilities and mandates under Regulation 1095/2010.
- (6) The responsibilities and mandates relating to assessment of systemic risks to financial stability, as the possibility to carry out such assessment are closely linked with the access to the broadest spectrum of participants and venues. Therefore where the responsibilities and mandates of a authority include the monitoring of systemic risk to financial stability, that authority should be able to assess those risks on the basis of the broadest and most granular data on SFTs regarding the relevant Member State, the euro area or the Union.
- (7) Access to data by an ESCB member helps it fulfil its role as a central bank of issue. Given the close link between SFTs and the transmission of monetary policy it is appropriate that the access level of an ESCB member as an issuer of currency is to transaction data for SFTs in the currency issued by that ESCB member. This access should cover instances where either the currency of the loan or one of the currencies of the collateral of the SFT is the currency issued by relevant member of the ESCB.
- (8) The relevant Union securities and markets authorities referred to in paragraph (i) of Article 12(2) of Regulation (EU) 2015/2365 have as a duty investor protection and should be granted access to all transaction data for SFTs in the transactions, markets, participants and assets that fall within the scope of that Regulation to the extent they are covered by the authorities' respective supervisory responsibilities and mandates. The authorities will also need as access to the transaction data of SFTs of the branches, subsidiaries or holding companies of those participants established in the relevant Member State so that they are able properly to assess any risks posed to the areas within their scope. For the same reason, the authorities should be able to access transaction data for SFTs where the securities or commodities lent or borrowed or provided as collateral relate to an entity established within the Member State, euro area or the Union, or where the securities lent or borrowed or provided as collateral are sovereign debt of the Member State, euro area or the Union. Supervisors and overseers of central

counterparties (CCPs) need access to transaction data of SFTs enable the effective exercise of their duties over such entities, and should therefore have access to all the information necessary for such mandate.

- (9) The ESRB, EBA and EIOPA are part of the European System for Financial Supervision and have mandates and responsibilities very similar to those of ESMA with regards to financial stability and systemic risk. These mandates and responsibilities include a) improving the functioning of the internal market, in particular, establishing a sound, effective and consistent level of regulation and supervision; (b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets; (c) strengthening international supervisory coordination; (d) preventing regulatory arbitrage and promoting equal conditions of competition; (e) ensuring that the taking of credit and other risks are appropriately regulated and supervised; and (f) enhancing customer protection. It is therefore important to ensure that these authorities have access to all transaction data reported by counterparties pursuant to Article 4 of Regulation (EU) 2015/2365.
- (10) Under Council Regulation (EU) No 1024/2013 a single supervisory mechanism composed of the ECB and the national competent authorities of the Member States was established to underpin the banking union and to ensure that the Union's policy relating to the prudential supervision of credit institutions was implemented in a coherent and effective manner. The mechanism also aims to ensure that the single rulebook for financial services is applied in the same manner to credit institutions in all participating Member States concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. A trade repository should ensure that each authority that is part of the SSM has access to the transaction data SFTs of those entities, their branches, subsidiaries and parent undertakings established in the relevant participating Member States.
- (11) Pursuant to Directive 2014/59/EU, , which established a framework for the recovery and resolution of credit institutions and investment firms, relevant resolution authorities should possess effective means of action with respect to the entities covered by that Directive 2014/59/EU in order to prevent contagion. In particular those authorities should prepare resolution plans, and have effective resolution tools and powers in case the entity is determined to be "failing or likely to fail". Furthermore, in order to deal in an efficient manner with failing institutions, the authorities should have the power to impose preparatory and preventative measures. In this respect, resolution authorities should have access to transaction data on SFTs reported by the entities established in their Member State, as well as the relevant branches, subsidiaries and parent undertakings, from the moment in which the authority is designated under that Directive.
- (12) Pursuant to Regulation 806/2014, Single Resolution Mechanism (SRM) is established and powers are conferred to the Single Resolution Board (SRB) to be responsible for the effective and consistent functioning of the SRM. The framework is similar to the one of the single supervisory mechanism and the SRB is responsible for drawing up the resolution plans for the entities subject to ECB's supervision or for which ECB is the consolidating supervisor, as well as for cross-border groups. Therefore, a trade repository should ensure that the Single Resolution Board has access to the transaction

data SFTs of the entities subject to Regulation 806/2014, their branches, subsidiaries and parent undertakings established in the relevant participating Member States.

- (13) The authorities identified by paragraph (m) of Article 12(2) of Regulation 2015/2365 are all those competent for the prudential supervision of credit institutions, investment firms, insurance and reinsurance companies, UCITS and AIFMs, occupational pensions funds, central securities depositories, as well as non-financial counterparties. In order that they are able to meet their responsibilities and mandates these authorities should have access to data reported by the entities, their branches, subsidiaries and holding companies established in the relevant participating Member States.
- (14) Trade repositories should follow a specific procedure for defining the terms and condition of data access. This would ensure standardisation and consistency of the data access and would reduce the burden for both authorities and trade repositories.
- (15) In order to enable the effective and efficient comparison and aggregation of data across trade repositories, XML format templates and XML messages developed in accordance with ISO 20022 methodology should be used for access to data and for communication between the authorities and the trade repositories. This should not exclude the possibility that trade repositories and the relevant authorities may agree between themselves to provide access or to communicate using some other format. The XML format templates should be used to provide the data to the authorities in a manner which facilitates its aggregation, while the XML messages streamline the data exchange process between the TRs and the authorities. The technical standards do not exclude the additional separate use of non-XML format templates, such as comma separated values (csv) or text (txt) files, to the extent that they allow the authorities to fulfil their responsibilities and mandates, and therefore those formats can continue being used by trade repositories in addition to, but never as a substitute for, the use of the XML format templates. However, as a minimum, XML format templates and XML messages based on ISO 20022 methodology should be used for all output reports and exchanges to ensure comparability and aggregation of data across trade repositories.
- (16) It is essential to facilitate the direct and immediate access to specific datasets and thus to establish a set of combinable ad-hoc queries referring to the parties to the trade, the economic terms, the type of SFT, the time horizon of execution, reporting and maturity, as well as the business and life-cycle events.
- (17) Confidentiality of data is a primary aspect and therefore any type of data exchange between trade repositories and authorities should be carried out through a secure machine-to-machine connection and by using data encryption protocols.
- (18) Harmonisation of the deadlines in which data is provided to the authorities by the trade repositories will improve the direct and immediate access to trade repository data and will allow the authorities and the trade repositories to better schedule their internal data processes.
- (19) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

- (20) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION

*Article 1*

**Access to data by the relevant authorities**

1. A trade repository shall ensure that transaction data includes the details of an SFT recorded by the trade repository, that is the data reported under Tables 1 to 4 of the Annex to [please insert a reference to RTS on reporting under Article 4(9) of SFTR] the relevant details of SFTs rejected by the trade repository under paragraphs [insert reference to RTS on registration or data collection], and the relevant details of an SFT following the performance of a reconciliation process carried out in accordance with [insert reference to paragraph f of Article 19 of draft RTS on registration or extension of registration under SFTR ].
2. Where an authority listed in paragraph (2) of Article 12 of Regulation (EU) 2015/2365 has more than one responsibility and mandate that entitle it to access to SFT transaction data reported pursuant to Article 4 of that Regulation, the trade repository shall ensure that the authority has a single access to the transaction data of SFTs encompassing those responsibilities and mandates.
3. A trade repository shall provide access to all transaction data for SFTs to ESMA for the purpose of it fulfilling its supervisory competences, responsibilities and mandates.
4. A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data for SFTs where the commodity lent or borrowed or provided as collateral is energy.
5. A trade repository shall provide a competent authority supervising a CCP and the relevant member of the European System of Central Banks (ESCB) overseeing the CCP, where applicable, with access to all transaction data for SFTs cleared or concluded by the CCP.
6. A trade repository shall provide a competent authority supervising the venues of execution of the reported SFTs with access to all transaction data for SFTs executed on those venues.
7. A trade repository shall provide a supervisory authority appointed under Article 4 of Directive 2004/25/EC with access to all transaction data for SFTs where the security lent or borrowed or provided as collateral is a security issued by a company which meets one of the following conditions:



- a. It is admitted to trading on a regulated market established within the relevant Member State and fall within the scope of the authority according to its supervisory responsibilities and mandates;
  - b. The company issuing the security It has its registered office or, where it has no registered office, its head office, in the Member State and fall within the scope of the authority according to its supervisory responsibilities and mandates;
  - c. It is an offeror for the entities provided for in points (a) or (b) and the consideration it offers includes securities.
- 8. A trade repository shall provide the relevant Union securities and markets authorities referred to in paragraph (i) of paragraph (2) of Article 12 of Regulation (EU) 2015/2365 with access to all transaction data for SFTs in the transactions, markets, securities lent or borrowed or provided as collateral, benchmarks used as reference and counterparties established in the relevant Member State, and the branches, subsidiaries and parent undertakings of the latter that fall within the scope of that authority according to its responsibilities and mandates. A trade repository shall provide these authorities also with transaction data of all branches operating in the relevant Member State of counterparties established in a third country.
- 9. A trade repository shall provide the European Systemic Risk Board, EBA and EIOPA with access to all transaction data for SFTs.
- 10. A trade repository shall provide the relevant members of the ESCB with access to all transaction data:
  - a. for SFTs where the securities lent or borrowed or provided as collateral relate to an entity established within the Member State or euro area or where the securities lent or borrowed or provided as collateral are sovereign debt of the Member State or euro area.
  - b. for SFTs where the currency lent or borrowed or provided as collateral is the currency issued by that authority.
- 11. For the monitoring of systemic risks to financial stability, a trade repository shall provide the relevant entities listed in paragraph 2 of Article 12 of Regulation (EU) 2015/2365 with access to all transaction data for SFTs concluded on trading venues or by counterparties established within the Member State or euro area, as applicable, and the branches, subsidiaries and parent undertakings of the latter. A trade repository shall provide these

authorities also with transaction data of all branches operating in the relevant Member State or euro area of counterparties established in a third country.

12. A trade repository shall provide ECB, in carrying out its tasks within a single supervisory mechanism under Council Regulation (EU) No 1024/2013, with access to all transaction data for SFTs concluded by counterparties established in participating Member States, as well as the relevant branches, subsidiaries and parent undertakings of the latter, that fall within the scope of that authority according to its responsibilities and mandates.
13. For the prudential supervision of counterparties, their branches, subsidiaries and parent undertakings, a trade repository shall provide the relevant authorities listed in paragraph (m) of Article 12(2) of Regulation (EU) 2015/2365 with access to all transaction data for SFTs concluded by:
  - a. a counterparty established in the Member State that falls within the scope of that authority's responsibilities and mandates and the relevant branches, subsidiaries and parent undertakings of the latter, and
  - b. a branch operating in the Member State of a counterparty established in a third country and that fall within the scope of that authority's responsibilities and mandates.
14. For the resolution planning under Directive 2014/59/EU, the trade repository shall provide the resolution authorities listed in paragraph (k) of 12(2) of Regulation (EU) 2015/2365 with access to all transaction data for SFTs concluded by:
  - a. a counterparty established in the Member State that falls within the scope of that authority's responsibilities and mandates and the relevant branches, subsidiaries and parent undertakings of the latter, and
  - b. a branch operating in the Member State of a counterparty established in a third country and that fall within the scope of that authority's responsibilities and mandates.
15. A trade repository shall provide the Single Resolution Board, established by Regulation (EU) 806/2014, with access to all transaction data for SFTs concluded by counterparties established in a participating Member State, and the branches, subsidiaries and parent undertakings of the latter, that fall within the scope of that authority's responsibilities and mandates.

## *Article 2*

### **Third country authorities' access**

In relation to an authority of a third country that is specified in a Commission Implementing Act pursuant to Article 19(1) of Regulation (EU) 2015/2365, a trade repository shall provide access to the data, taking account of the third country authority's mandate and responsibilities and in line with the provisions of the relevant implementing act under Article 19(1).

## *Article 3*

### **Terms and conditions for data access**

1. A trade repository shall:

- a. designate a person or persons responsible for liaising with entities listed under Article 12(2) of Regulation (EU) 2015/2365;
- b. publish on its website the instructions that an entity listed under Article 12(2) of Regulation (EU) 2015/2365 should follow to submit a request for access to SFT data;
- c. provide an entity listed under Article 12(2) of Regulation (EU) 2015/2365 with a template form described in paragraph 2 and a template, described in paragraph 3 of this Article;
- d. provide an entity listed under Article 12(2) of Regulation (EU) 2015/2365 with access to data based only on information contained in the template forms provided;
- e. establish the direct and immediate access to data by an entity listed under Article 12(2) of Regulation (EU) 2015/2365 in a maximum timespan of 30 calendar days
- f. establish the technical arrangements necessary for an entity listed under Article 12(2) of Regulation (EU) 2015/2365 to access the data in accordance with paragraphs 4 to 10 of this Article.

2. A trade repository shall prepare a template form to be used by an entity listed under Article 12(2) of Regulation (EU) 2015/2365 in submitting a request for access to SFT data that shall include the following information:
  - a. Name of the authority
  - b. Contact person at the authority
  - c. The authorities legal responsibilities and mandates
  - d. List of authorised users
  - e. Credentials for secure SSH FTP connection
  - f. Any other technical information relevant to the authority's access to data
3. A trade repository shall assess access to data of an entity listed under Article 12(2) of Regulation (EU) 2015/2365 on the basis of a template that includes the following information:
  - a. The territory, such as Member State, euro area or the Union for which that entity is competent;
  - b. The types of counterparties<sup>82</sup> for which that entity is competent;
  - c. The types of SFTs that are supervised by that entity;
  - d. The Member State, euro area or the Union where the supervised issuer of securities that were borrowed or lent or provided as a collateral is established;
  - e. The Member State, euro area or the Union where the commodities produced or delivered were either borrowed or lent or provided as a collateral;
  - f. Any venues of execution that are supervised by that entity
  - g. Any CCPs that are supervised or overseen by that entity
  - h. Currency that is issued by that entity
  - i. Any benchmarks used in the Union, for whose administrator that entity is competent

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<sup>82</sup> As per the classification reported by counterparties in the relevant data field

4. A trade repository shall allow the entities listed in Article 12(2) of Regulation (EU) 2015/2365 to connect using a secure machine-to-machine interface, including at least the SSH File Transfer Protocol, in order to submit data requests and to receive data. The trade repository shall use standardised XML messages developed in accordance with ISO 20022 methodology to communicate through that interface.
5. In accordance with Articles 1 and 2 of this Regulation, a trade repository shall provide the entities listed Article 12(2) of Regulation (EU) 2015/2365 with access to the following information:
  - a. all reports of SFTs;
  - b. the latest trade states of SFTs that have not matured or which have not been the subject of reports with action types “E”, “C”, “P” as referred to in Field 98 in Table 2 of the Annex [insert reference to ITS under Article 4 SFTR]
  - c. any SFT report the contents of which meet predefined criteria that have been notified in advance to the trade repository by an entity listed in Article 12(2) of Regulation 2015/2365;
  - d. any rejected SFT reports during the previous working day, including the reasons for their rejection, as specified in accordance with Table 2 of the Annex to this Regulation.
  - e. the reconciliation status of all reported SFTs, except those SFTs that have expired or for which SFT reports with Action type “C” or “P” were received more than a month before the date on which the reconciliation process takes place.
6. A trade repository shall allow the entities listed in Article 12(2) of Regulation (EU) 2015/2365 to establish predefined periodic requests to access all details of SFTs, as determined in paragraph 5, they need to fulfil their responsibilities and mandates.
7. Upon request, a trade repository shall provide the entities listed in Article 12(2) of Regulation (EU) 2015/2365 with access to details of SFTs 2015/2365, according to any combination of the following fields as referred to in the Annex to [insert reference to ITS under Article 4]:
  - a. Reporting timestamp;
  - b. Reporting Counterparty;

- c. Other Counterparty;
- d. Branch of the reporting Counterparty;
- e. Branch of the other Counterparty;
- f. Sector of the reporting counterparty;
- g. Nature of the reporting counterparty;
- h. Broker;
- i. Report submitting entity;
- j. Beneficiary;
- k. Type of SFT;
- l. Type of collateral component;
- m. Venue of execution;
- n. Execution timestamp;
- o. Maturity date;
- p. Termination date;
- q. CCP; and
- r. Action type.

8. A trade repository shall ensure that it has the technical capability to provide direct and immediate access to the details of SFTs necessary for the entities listed in Article 12(2) of Regulation (EU) 2015/2365 to fulfil their mandates and responsibilities. The access to data shall be provided in accordance with the deadlines set out in the following subparagraphs:

- a. Where an entity listed in Article 12(2) of Regulation (EU) 2015/2365 requests access to details of outstanding SFTs, or of SFTs which have either matured or for which reports with action types “E”, “C”, or “P” as referred to in Field 98 in Table 2 of the Annex to [please insert reference to ITS under Article 4 of SFTR] were made up to and including one year before the date on which the request was submitted, a trade repository shall fulfil that request no later than 12:00 Universal Coordinated Time on the first calendar day following the day on which the request to access is submitted.

- b. Where an entity listed in Article 12(2) of Regulation (EU) 2015/2365 requests access to details of SFTs which have either matured or for which reports with action types “E”, “C”, or “P” as referred to in Field 98 in Table 2 of the Annex to [please insert reference to ITS under Article 4 of SFTR] were made more than one year before the date on which the request was submitted, a trade repository shall fulfil that request no later than three working days after the request to access is submitted.
  - c. Where a request to access data by an entity listed in Article 12(2) of Regulation (EU) 2015/2365 relates to SFTs fall under both points (a) and (b), the trade repository shall provide the transaction data no later than three working days after the request to access is submitted.
- 9. A trade repository shall confirm receipt of and validate any request to access to data submitted by the entities listed in Article 12(2) of Regulation (EU) 2015/2365 and shall notify those entities on the result of the validation no later than sixty minutes after the submission of the request.
- 10. A trade repository shall use electronic signature and data encryption protocols in order to ensure the confidentiality, integrity and protection of the data made available to the entities listed in Article 12(2) of Regulation (EU) 2015/2365.

## **17 Annex X – Draft amendments to RTS on access levels under EMIR**

**COMMISSION DELEGATED REGULATION (EU) No .../...**

**of [ ]**

**amending Commission Delegated Regulation 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the opinion of the European Central Bank,

Having regard to 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, and in particular Article 81 (5) thereof,

Whereas:

- (1) Article 32(2) of Regulation (EU) 2015/2365 has amended Article 81(3) of Regulation (EU) No 648/2012 to add a number of entities to the list of those to which a trade repository should make information available. Regulation (EU) No 151/2013 should therefore be amended to specify the frequency and details of the information to which these entities should have access.
- (2) Having access to all details of derivatives, including the details of derivatives that have not been accepted by the trade repository or the details of derivatives following the performance of the reconciliation of derivatives is of utmost importance to ensure compliance with the obligations stemming from Regulation (EU) No 648/2012. Position data should regard derivatives data aggregated by certain criteria including, underlying, product, maturity for individual counterparties.
- (3) To ensure achievement of the objectives of Regulation (EU) 2015/2365 related to the supervision of systemic risks and build-up of leverage in the financial system, it is essential that a trade repository is able to accurately identify the relevant counterparties, their subsidiaries and parent undertakings and provide information on their transactions to the relevant supervisory authorities entitled to have access. The trade repositories should rely on the relationship data of subsidiaries and groups collected by the Global Legal Entity Identifier System, where available.



- (4) Many of the entities that are entitled to access details of derivatives in trade repositories have a number of responsibilities and mandates that would permit them to access these details. In order to establish efficient access to data, a trade repository should ensure that each authority has a single access to data irrespective of its different responsibilities and mandates.
- (5) The responsibilities and mandates of an authority are essential to determine its access levels. The responsibilities and mandates are determined by Union and/or national legislation, where all the specific aspects relating to entities, products, infrastructures or assets are defined and the jurisdiction of an authority is determined as its responsibilities and mandates circumscribed to a particular territory, such as a Member State, the euro area or the Union. The trade repositories should ensure that the authorities have direct and immediate access to all the data that they need in order to be able to fulfil their responsibilities and mandates.
- (6) The responsibilities and mandates relating to assessment of systemic risks to financial stability, as the possibility to carry out such assessment are closely linked with the access to the broadest spectrum of participants and venues. Therefore where the responsibilities and mandates of a authority include the supervision of systemic risk to financial stability, that authority should be able to assess those risks on the basis of transaction data on derivatives on participants and venues regarding the relevant Member State, the euro area or the Union.
- (7) Access by the relevant ESCB members serves to fulfil their task as central bank of issue. Given the links between derivatives and the transmission of monetary policy it is justified that the access level of ESCB as issuer of the currency is to position data for derivatives in the currency issued by that ESCB member.
- (8) The ESRB, EBA and EIOPA are part of the European System for Financial Supervision and have mandates and responsibilities very similar to those of ESMA with regards to financial stability and systemic risk. These mandates and responsibilities include a) improving the functioning of the internal market, in particular, establishing a sound, effective and consistent level of regulation and supervision; (b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets; (c) strengthening international supervisory coordination; (d) preventing regulatory arbitrage and promoting equal conditions of competition; (e) ensuring that the taking of credit and other risks are appropriately regulated and supervised; and (f) enhancing customer protection. It is therefore important to ensure that those authorities have access to all transaction data reported by counterparties with reporting obligation under Article 9 of Regulation (EU) No 648/2012.
- (9) Under Council Regulation (EU) No 1024/2013 a single supervisory mechanism composed of the ECB and the national competent authorities of the Member States was established to underpin the banking union and to ensure that the Union's policy relating to the prudential supervision of credit institutions was implemented in a coherent and effective manner. The mechanism also aims to ensure that the single rulebook for financial services is applied in the same manner to credit institutions in all participating Member States concerned, and that those credit institutions are subject to supervision

of the highest quality, unfettered by other, non-prudential considerations. A trade repository should ensure that each authority that is part of the SSM has access to the transaction data of derivatives of the entities that are established in the relevant participating Member States, as well as the relevant subsidiaries and parent undertakings.

- (10) Pursuant to Directive 2014/59/EU, which established a framework for the recovery and resolution of credit institutions and investment firms, relevant resolution authorities should possess effective means of action with respect to the entities covered by that Directive in order to prevent contagion. In particular, those authorities should prepare resolution plans, and have effective resolution tools and powers in case an entity is determined to be “failing or likely to fail”. Furthermore, in order to deal in an efficient manner with failing institutions, the authorities should have the power to impose preparatory and preventative measures. In this respect, resolution authorities should have access to transaction data on derivatives reported by the entities established in their Member State, as well as the relevant subsidiaries and parent undertakings from the moment in which the authority is designated under that Directive.
- (11) Pursuant to Regulation 806/2014, Single Resolution Mechanism (SRM) is established and powers are conferred to the Single Resolution Board (SRB) to be responsible for the effective and consistent functioning of the SRM. The framework is similar to the one of the single supervisory mechanism and the SRB is responsible for drawing up the resolution plans for the entities subject to ECB’s supervision or for which ECB is the consolidating supervisor, as well as for cross-border groups. Therefore, a trade repository should ensure that the Single Resolution Board has access to the transaction data SFTs of the entities subject to Regulation 806/2014, their subsidiaries and parent undertakings established in the relevant participating Member States.
- (12) The authorities included under paragraphs (o) and (p) of Article 81(3) of Regulation 648/2012 are all those competent for prudential supervision of credit institutions, investment firms, insurance and reinsurance companies, UCITS and AIFM, occupational pensions funds, central securities depositories, as well as non-financial counterparties. In order that they are able meet their responsibilities and mandates these authorities should have access to data reported by the entities, their subsidiaries and parent undertakings established in the relevant participating Member States.
- (13) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.
- (14) In accordance with Article 10 of Regulation (EU) No 1095/2010, ESMA has consulted the relevant authorities and the members of the European System of Central Banks (ESCB) before submitting the draft regulatory technical standards on which this Regulation is based. ESMA has also conducted open public consultations on these draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the ESMA Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

## HAS ADOPTED THIS REGULATION

### *Article 1*

'Article 2 is replaced by the following article:

1. A trade repository shall ensure that transaction data includes the details of a derivative contract recorded by the trade repository, the relevant details of derivatives rejected by the trade repository, as well as the relevant details following the performance of a reconciliation process carried out in accordance with [please insert reference to the procedure under paragraph f of amended Article 19 of Commission Delegated Regulation 150/2013].
2. Where an authority listed in paragraph (3) of Article 81 of Regulation (EU) No 648/2012 has more than one responsibility and mandate that entitle it to access to derivatives transaction data reported pursuant to Article 9 of that Regulation, the trade repository shall ensure that the authority has a single access to the transaction data of derivatives encompassing those responsibilities and mandates.
3. A trade repository shall provide access to all transaction data for derivatives to ESMA for the purpose of it fulfilling its supervisory competences, responsibilities and mandates.
4. A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data regarding derivatives where the underlying is energy.
5. A trade repository shall provide a competent authority supervising a CCP and the relevant member of the European System of Central Banks (ESCB) overseeing the CCP, where applicable, with access to all transaction data for derivatives cleared by the CCP.
6. A trade repository shall provide a competent authority supervising the venues of execution of the reported derivatives contracts with access to all transaction data for contracts executed on those venues.
7. A trade repository shall provide a supervisory authority appointed under Article 4 of Directive 2004/25/EC with access to all transaction data for derivatives where the underlying is a security issued by a company which meets one of the following conditions:
  - a. It is admitted to trading on a regulated market established within the relevant Member State and fall within the scope of the authority according to its supervisory responsibilities and mandates;
  - d. The company issuing the security It has its registered office or, where it has no registered office, its head office, in the Member State and fall within

the scope of the authority according to its supervisory responsibilities and mandates;

- e. It is an offeror for the entities provided for in points (a) or (b) and the consideration it offers includes securities.
8. A trade repository shall provide the relevant Union securities and markets authorities referred to in point (j) of paragraph (3) of Article 81 of Regulation (EU) No 648/2012 with access to all transaction data for markets, contracts, underlyings, benchmarks and counterparties, as well as the subsidiaries or parent undertakings of the latter that fall within the scope of that authority according to its responsibilities and mandates.
9. A trade repository shall provide the European Systemic Risk Board, EBA and EIOPA with access to all transaction data for derivatives.
10. A trade repository shall provide the relevant members of the ESCB with access to:
- a. all transaction level data for derivatives where the reference entity of the derivative is established within the relevant Member State or euro area and falls within the scope of that authority according to its supervisory responsibilities and mandates, or where the reference obligation is sovereign debt of the Member State or euro area, and
  - b. position data for derivatives contracts in the currency issued by that member.
11. For the monitoring of systemic risks to financial stability, a trade repository shall provide the relevant entities listed in paragraph 3 of Article 81 of Regulation (EU) No 648/2012 with access to all transaction data on derivatives concluded on trading venues or by CCPs and counterparties, established within the Member State or euro area as applicable, as well as the relevant subsidiaries or parent undertakings of the latter.
12. A trade repository shall provide ECB, in carrying out its tasks within a single supervisory mechanism under Council Regulation (EU) No 1024/2013, with access to all transaction data for derivatives concluded by counterparties established in participating Member States, as well as the subsidiaries and parent undertakings, that fall within the scope of that authority's responsibilities and mandates.
13. For the prudential supervision of counterparties, their subsidiaries and parent undertakings, a trade repository shall provide the relevant authorities listed in points (o) and (p) of paragraph 3 of Article 81 of Regulation (EU) No 648/2012 with access to all transaction data for derivatives concluded by all counterparties, as well as the subsidiaries

and parent undertakings, that fall within the scope of that authority's responsibilities and mandates.

14. For the resolution planning of counterparties, their subsidiaries and parent undertakings subject to Directive 2014/59/EU, the trade repository shall provide the resolution authorities listed in point (m) of paragraph 3 of Article 81 of Regulation (EU) No 648/2012 with access to all transaction data for derivatives concluded by such counterparties, subsidiaries and parent undertakings.

15. A trade repository shall provide the Single Resolution Board, established by Regulation (EU) No 806/2014, with access to all transaction data for derivatives concluded by counterparties established in participating Member States, as well as the subsidiaries and parent undertakings, that fall within the scope of that authority's responsibilities and mandates.

## *Article 2*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*

*The President*

Jean-Claude JUNCKER

## **18 Annex XI - Draft implementing technical standards on procedures and forms for submitting information on sanctions and measures**

### **COMMISSION IMPLEMENTING REGULATION (EU) .../...**

**laying down implementing technical standards with regard to the procedures and forms for exchange of information on sanctions, measures and investigations under Article 25(1) and (2) of Regulation (EU) 2015/2365 of the European Parliament and of the Council**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012<sup>83</sup>, and in particular Article 25(4) thereof,

Whereas:

- (1) It is appropriate to set out common procedures and forms for competent authorities submitting information to the European Securities and Markets Authority (ESMA) with regard to administrative sanctions and other administrative measures imposed, criminal investigations undertaken, and criminal sanctions imposed, as referred to in paragraphs 1 and 2 of Article 25 of Regulation (EU) 2015/2365.
- (2) It is necessary to avoid potential double entries and conflicts of competence between multiple reporting authorities within a Member State. Designating a single contact point per Member State with ESMA is the most effective and least onerous means of pursuing that objective.
- (3) With a view to including meaningful information in the annual reports on sanctions, measures and investigations to be published by ESMA under paragraphs 1 and 2 of Article 25 of Regulation (EU) 2015/2365, competent authorities should report the

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<sup>83</sup> OJ L 337, 23.12.2015, p. 1.

information by using specific forms clearly indicating which Articles of Regulation (EU) 2015/2365 were infringed.

- (4) In order to limit their reporting burden, competent authorities should provide ESMA with the granular information referred to in Article 25(1) of Regulation (EU) 2015/2365 by making a clear reference in the specific form to each administrative sanction or administrative measure which has already been reported separately to ESMA in respect of the relevant period under Article 25(3) of Regulation (EU) 2015/2365. Where no such report has been made, the competent authority should provide a copy of the decision imposing the sanction or measure and/or a clear summary of the essential elements of the decision.
- (5) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (6) ESMA did not conduct open public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse potential related costs and benefits of introducing the standard forms and procedures for the relevant competent authorities, as this would have been disproportionate in relation to their scope and impact, taking into account that the addressees of the implementing technical standards would only be the national competent authorities of the Member States and not market participants. ESMA requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>84</sup>,

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<sup>84</sup> OJ L 331, 15.12.2010, p. 84

HAS ADOPTED THIS REGULATION:

*Article 1*

1. ESMA shall designate its contact point for all communications relating to the information referred to in paragraphs 1 and 2 of Article 25 of Regulation (EU) 2015/2365. Details of the contact point shall be made available on ESMA's website.
2. Competent authorities shall designate their contact points for all communications relating to their provision of the information referred to in paragraphs 1 and 2 of Article 25 of Regulation (EU) 2015/2365. Competent authorities shall inform ESMA of those contact points.

*Article 2*

1. Competent authorities shall provide ESMA with the information referred to in Article 25(1) of Regulation (EU) 2015/2365 using the form in Annex I to this Regulation. Copies of decisions imposing administrative sanctions and other administrative measures shall be provided in email attachments accompanying the form.
2. Competent authorities shall provide ESMA with the information referred to in Article 25(2) of Regulation (EU) 2015/2365 using the form in Annex II to this Regulation.
3. The competent authorities shall provide the electronically completed forms referred to in paragraphs 1 and 2 by email to ESMA's contact point by 31 March each year from 2018 onwards. The information in the forms shall relate to all measures and sanctions imposed and investigations undertaken in the preceding calendar year. Measures and sanctions imposed and investigations undertaken in 2016 shall be reported in the same manner to ESMA's contact point by 31 December 2017.

*Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.



Done at Brussels,

*For the Commission*  
*The President*

Jean-Claude JUNCKER

## ANNEX I

### **Form for submitting aggregated and granular information on all administrative sanctions and other administrative measures imposed by competent authorities**

Aggregated and granular information on all administrative sanctions and other administrative measures imposed by [*name of the competent authority*] in [*year*] under Article ... of ...

FROM:

Member State:

Competent authority:

Address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

ESMA

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear [*insert appropriate name*]

In accordance with Article 25(1) of Regulation (EU) 2015/2365, I wish to provide you with aggregated and granular information regarding all administrative sanctions and other administrative measures imposed by [*name of the competent authority*] in [*year*]:

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The aggregated information is set out in the following table:

Article of Regulation (EU) 2015/2365 which was infringed	Number of sanctions/measures imposed in the reporting period	Pecuniary amount of financial sanctions imposed in the reporting period
[number of the article, paragraph, subparagraph]	[number of sanctions/measures]	[pecuniary amount of financial sanctions <sup>(*)</sup> ]
<b>Total sanctions/measures</b>	<b>[total number of sanctions/measures <sup>(†)</sup>]</b>	<b>[total value of fines<sup>(*)</sup>(†)]</b>

**(\*)** Please insert value in Euro or in national currency. If the relevant sanction refers not only to breaches relating to the relevant article of Regulation (EU) 2015/2365, but also to other provisions, add the mention “AGGREGATED FIGURE” to each value.

**(†)** As sanctions/measures imposed may be based on more than one legislative provision, the sum of the different lines (number of sanctions or measures / pecuniary amount of financial sanctions) may not correspond to the total number of sanctions/measures or to the total value of fines imposed.

**The granular information in respect of each of the measures and sanctions addressed above is provided as follows.**

**First**, we have already reported the following measures and sanctions imposed in [year] to ESMA in accordance with Article 25(3) of Regulation (EU) 2015/2365:

[List of each measure and sanction reported in the relevant period]

**Secondly**, copies of the decision/(s) for the following measures and sanctions imposed in [INSERT YEAR] are provided in separate email attachment/(s) accompanying this form:

[List of each measure and sanction for which a decision is being provided]

**Thirdly**, summaries of the following measures and sanctions are provided below:

*[List in numerical order (1., 2., 3., et seq.) of each measure and sanction for which a summary is then provided below.]*

1. [Reference to the first measure/sanction listed above]

[Summary of measure/sanction]

2. [Reference to the second measure/sanction listed above]

[Summary of measure/sanction]

[For the third and each subsequent summary being provided, continue in numerical order by using the format above.]

[Yours sincerely,

[signature]

## ANNEX II

### Form for submitting anonymised and aggregated data on all criminal investigations undertaken and criminal sanctions imposed

Anonymised and aggregated data on all criminal investigations undertaken and criminal sanctions imposed in [year] under Article ... of ...

FROM:

Member State:  
Competent authority:  
Address:

(Contact details of the designated contact person)

Name:  
Telephone:  
Email:

TO:

ESMA

(Contact details of the designated contact person)

Name:  
Telephone:  
Email:

Dear [insert appropriate name]

In accordance with Article 25(2) of Regulation (EU) 2015/2365, I wish to provide you with anonymised and aggregated information regarding all criminal investigations undertaken and criminal sanctions imposed in [Member State] in [year].

#### Criminal investigations:

Provisions of Regulation (EU) 2015/2365 in respect of which criminal sanctions have been laid down, pursuant to which criminal investigations have been undertaken.	<b>Number of criminal investigations in the reporting period</b>
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[number of the article, paragraph, subparagraph]	[number of criminal investigations]
<b>Total criminal investigations</b>	<b>[total number of criminal investigations<sup>(*)</sup>]</b>

(\*) As criminal investigations may be based on more than one legislative provision, the sum of the different lines may not correspond to the total number of criminal investigations.

#### **Criminal sanctions imposed:**

Provisions of Regulation (EU) 2015/2365 in respect of which criminal sanctions have been laid down and imposed.	<b>Number of criminal sanctions imposed in the reporting period</b>	<b>Value of criminal fines imposed in the reporting period</b>
[number of the article, paragraph, subparagraph]	[number of criminal sanctions]	[value of criminal fines <sup>(†)</sup> ]
<b>Total criminal sanctions</b>	<b>[total number of criminal sanctions<sup>(†)</sup>]</b>	<b>[total value of criminal fines<sup>(†)</sup> (††)]</b>

**(†)** *Please insert value in euro or in national currency. If the relevant criminal sanction refers not only to breaches relating to the relevant article of Regulation (EU) 2015/2365, but also to other provisions, add the mention “AGGREGATED FIGURE” to each value.*

**(††)** *As criminal sanctions imposed may be based on more than one legislative provision, the sum of the different lines (number of criminal sanctions/value) may not correspond to the total number of criminal sanctions / total value of fines imposed.*

Yours sincerely,

[signature]

## 19 Annex XII - Cost-benefit analysis

### 19.1 Introduction

1. ESMA's choices in this final draft technical standards are of a pure technical nature and do not imply strategic decisions or major policy choices. ESMA's options are limited to its specific mandate for drafting these particular regulatory and implementing technical standards, and the need to ensure compliance with the objectives set out in SFTR. The main policy decisions taken under the secondary legislation, i.e. SFTR, have already been assessed and published by the European Commission in its own impact assessment work.<sup>85</sup>
2. As part of its mandate to conduct an analysis of the costs and benefits of its draft RTS, ESMA has on several occasions engaged with market participants to consult the industry, in order to understand current SFT market practices and seek to minimise the regulatory burden while achieving the objectives of SFTR. This cost-benefit analysis (CBA) is based on, but not limited to, input that has been received from two rounds of consultations (Discussion Paper and Consultation Paper), the SFTR open hearing, and multiple bilateral or multilateral discussions where direct follow-up on the consultations feedback was needed.
3. In addition, ESMA hired an external contractor to help with the quantitative assessment of the costs and benefits of the Level 2 requirements. The consultant relied primarily on interviews and a data collection exercise to provide a comprehensive CBA of the SFTR requirements. The CBA report from the consultants, which informed ESMA's decisions in a number of areas, is attached to the end of this Annex.
4. Although ESMA has a mandate to conduct a CBA on Level 2 requirements, and not Level 1, as with many other CBAs of RTS in other areas within ESMA's remit, it is sometimes difficult, including for CBA survey respondents, to clearly distinguish between the costs imposed by Level 2 compared to Level 1 rules.
5. Given the breadth and timing of the regulatory work and CBA (which took place in parallel to ESMA's public consultations), the consultants were not able to explore in detail all of the areas addressed in the final report. Therefore, in addition to the report from the consultants, this Annex also includes an analysis of the costs and benefits of the options available to

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<sup>85</sup> [http://eur-lex.europa.eu/resource.html?uri=cellar:e186dd0b-89b3-11e3-87da-01aa75ed71a1.0001.01/DOC\\_3&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:e186dd0b-89b3-11e3-87da-01aa75ed71a1.0001.01/DOC_3&format=PDF)



ESMA in specific areas, which could not be thoroughly investigated by the consultants, but where market participants expressed particular concern with regards to the potential regulatory burden.

## **19.2 Reporting**

### **19.2.1 Collateral linking**

6. The overall costs and benefits associated with Level 2 requirements regarding the reporting requirements are assessed in the consultant reports attached at the end of this annex. This section focuses specifically on one issue where ESMA received feedback from market participants: namely, the fields to be used for linking the collateral data with the loan data, where SFTs are collateralised on a net exposure basis. The linking mechanism will vary depending on whether SFTs are centrally or non-centrally cleared.
7. The ability to link SFTs, and the collateral and loan data, in a centrally cleared context is explored in section 4.3.4: in order to seek alignment with the CPMI-IOSCO work on OTC derivatives, the linking mechanism will take place by using prior-UTIs (i.e. the UTIs of the bilateral trade(s) before clearing).
8. In the context of non-centrally cleared transactions, the objective is to link the collateral data for trades collateralised on a net exposure basis with the loan data, for public authorities to be able to assess actual risk exposures, at any point in time, resulting from the loan and the collateral leg of the outstanding transactions.
9. As highlighted in section 4.3.7.2.2, the assessment of net exposures should capture all open SFTs (i.e. SFTs that have not reached their maturity date) regardless of the type of collateral allocation, i.e. trade-based collateral allocation as well as collateral allocation based on net exposures. In the case of collateral allocation based on net exposures, collateral is reported separately from the underlying trades, requiring ESMA to define an appropriate mechanism for linking the collateral data with the loan data.
10. During the consultation process, market participants highlighted the cost of reporting individual trades that are collateralised on a net exposure basis. However, ESMA notes that the reporting of individual transactions is a Level 1 requirement, justifying the need for ESMA to identify an appropriate linking mechanism that allow for the reporting of individual transactions while taking into account existing market practices regarding collateralisation, e.g. on a net exposure basis.

11. Following feedback to the discussion paper received, the possibility to rely on UTIs for the linking mechanism of non-centrally cleared SFTs was discarded due to its impracticality. Subsequently, ESMA proposed in the Consultation Paper to use the Master Agreement, LEIs and SFT value date. However, respondents brought to ESMA's attention that the netting set might contain transactions with value date in the future. In order to understand which part of the collateral responds to the transactions that have already been settled, ESMA weighed the pros and cons of including an additional field ("Value date of the collateral") as an additional linking element.

<b>Objective</b>	<i>Linking collateral data with the loan data to assess exposures between counterparties, when collateral used in non-centrally cleared SFTs is reported on net exposure basis</i>
Option 1	Linking mechanism based on the snapshot date. This would include all the collateral, including pre-paid collateral that has been settled up to that date.
Option 2	Linking mechanism based on the loan value date. This would include the farthest loan value date for which the collateral is posted.
Option 3	Linking mechanism based on the value date of the collateral.
Preferred option	<b>Option 3:</b> Despite the potential additional costs related to the addition of a new field in the table, and the resources required to analyse this field, gathering information on the value date of the collateral will be essential for authorities to reliably assess risk exposures, which is one of the key objectives of SFTR.

Option 1	Linking mechanism based on the snapshot date.
<i>Benefits</i>	Allows to assess the exposures by comparing the aggregate SFT loan amount where the value date is smaller than or equal to date T (Event date) with the total collateral posted as of date T.
<i>Costs:</i>	The collateral reported on T would be considered as covering <i>all</i> the transactions, irrespective of their value date. Hence, it would not be known if the total collateral includes pre-paid collateral. This implies limitations to the interpretation of net exposures.

Option 2	Linking mechanism based on the loan value date.
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<i>Benefits</i>	Allows to assess whether there is a pre-paid collateral and to which transactions within the netting set the collateral corresponds.
<i>Costs:</i>	<p>Authorities would not know for which day the collateral is reported and would not be able to understand the effective exposure on a given day.</p> <p>In case of IT issues impeding the reporting on date T, authorities would receive on T+1 multiple reports from which they would not be to distinguish between the reports.</p> <p>Reporting counterparties would need to amend the collateral reported in advance upon the conclusion of new SFTs, which would increase the burden of reporting.</p> <p>Lastly, there are potential issues with the interpretation of the data.</p>

Option 3	Linking mechanism based on the collateral value date.
<i>Benefits</i>	<p>Allows authorities to assess the actual exposures using the collateral data reported and collateral value date, together with the loan value date.</p> <p>Allows authorities to assess whether there is a prepaid collateral and to which transactions the collateral corresponds, providing an accurate picture of the reality.</p>
<i>Costs:</i>	<p>Additional field needs to be filled by market participants in the reporting process, which may marginally increase costs and could potentially lead to lower data quality rather than additional granularity.</p> <p>Additional resources required from authorities for the assessment of exposures using an extra field.</p>

### 19.2.2 Collateral reuse

12. As discussed in section 4.3.9, SFTR requires the reporting of data elements related to the availability of collateral securities for reuse, and on the actual reuse of the collateral. During the consultations, several market participants highlighted that the operational costs associated with the reporting of collateral reuse were significant. Such costs would result

from the need to build additional infrastructure and increase headcount in order to track the actual reuse of collateral securities across different business lines and accounts.

13. While the reporting of reuse is a Level 1 requirement, a number of respondents indicated that the costs associated with the reporting would substantially decrease if the frequency of the reporting were to take place on a monthly or weekly basis, instead of daily. ESMA further investigated this question with the respondents to the consultations, and weighed it against the overarching objectives of the Regulation.

14. In a January 2017 report<sup>86</sup>, the FSB highlighted the potential financial stability issues associated with the reuse of collateral. These issues include namely:

- a. Risks arising from obstacles to clients accessing their securities
- b. Regulatory arbitrage in the presence of non-harmonised regulatory regimes
- c. The contribution of collateral reuse to the build-up of leverage
- d. The liquidity and funding risk illusion
- e. The increased interconnectedness
- f. The contribution to procyclicality in the financial sector
- g. The amplification of risks related to sudden price changes of collateral

15. In the consultation feedback, the respondents in favour of a lower reporting frequency highlighted that monthly reporting of reuse should be sufficient to analyse the risks from collateral reuse. ESMA recognises that the analysis of some of the risks identified by the FSB (e.g. the build-up of leverage in the system, or interconnectedness) may warrant a lower reporting frequency. On the other hand, a lower reporting frequency would impede the analysis of others (e.g. contribution to procyclicality, or amplification of risks related to sudden price changes of collateral), where higher frequency data is required, which could seriously hamper the financial stability objective of SFTR, both at a national and EU-level. The benefits and costs of the different reporting frequencies are summarised below.

<b>Objective</b>	<i>Reporting of collateral reuse</i>
Option 1	Daily reporting

<sup>86</sup> <http://www.fsb.org/2017/01/re-hypothecation-and-collateral-re-use-potential-financial-stability-issues-market-evolution-and-regulatory-approaches/>

Option 2	Weekly reporting
Option 3	Monthly reporting
Preferred option	<p><b>Option 1:</b> Despite the additional on-going operational costs incurred by market participants from a higher reporting frequency, ESMA believes that the daily reporting of reuse is paramount to assess <i>all</i> financial stability risks associated with collateral reuse, as described by the FSB.</p> <p>Monthly reporting would prove inadequate for the analysis of the impact of reuse on short-term market movements. While weekly reporting could be sufficient to meet analytical requirements, daily reporting would provide much greater granularity to authorities to conduct their risk assessment and perform their risk monitoring duties.</p> <p>This includes, for monetary authorities, the ability to monitor the impact of monetary policy changes on the behaviour of market participants and the impact of collateral reuse practices on the transmission mechanism of monetary policy.</p> <p>Moreover, reporting reuse on a daily basis would be in line the rest of the SFTR reporting regime. ESMA believes that the additional costs may be partly mitigated by the daily reporting and mark-to-market valuation of collateral data, which should be some of the drivers of changes in the amount of collateral reused.</p> <p>Market participants indicated that manual intervention would be required for reconciliation purposes in order to ensure overall consistency of the data. However, they also indicated that many of these issues should be resolved post settlement. To acknowledge for this and reduce the burden on reporting entities, ESMA agrees that the reporting of reuse should be based on settlement date +1 day (S+1).</p>

Option 1	Daily reporting	
	Qualitative description	Quantitative description
<i>Benefits</i>	Allows authorities to assess <i>all</i> financial stability risks associated with collateral reuse, in particular those where short-term market movements are relevant (procyclicality, sudden price changes).	

<i>On-going compliance costs</i>	<p>Data collection and integration, data validation, data cleaning and storing.</p> <p>Costs may double if back-ups need to be in place, to properly manage absence and staff rotation. Importantly this cost would be roughly the same irrespective of the size of the reporting firm.</p> <p>The timing of the reporting on T+1 will require significant manual reconciliation. However, the issues might be resolved post settlement.</p>	At least 1 potential additional headcount per reporting firm, which can be estimated at around 100,000 EUR p.a.
<i>One-off compliance costs</i>	The frequency of reporting should not have a major impact on the costs resulting from the development of new IT systems and build-up of infrastructure required for integrating and reporting reuse data.	

Option 2	Weekly reporting	
	Qualitative description	Quantitative description
<i>Benefits</i>	<p>Allows authorities to assess <i>most financial</i> stability risks associated with collateral reuse, with some limitations for risks related to short-term market movements (procyclicality, sudden price changes).</p> <p>Weekly data quality may be potentially be higher than daily data due to the lower number of quality checks required.</p>	
<i>On-going compliance costs</i>	The nature of the costs is similar to daily reporting, but the lower frequency of reporting implies lower	0.25 potential additional headcount (25,000 EUR p.a.) per reporting firm

	costs stemming data validation, cleaning and reporting.	
<i>One-off compliance costs</i>	The frequency of reporting should not have a major impact on the costs resulting from the development of new IT systems and build-up of infrastructure required for integrating and reporting reuse data.	

Option 3	Monthly reporting	
	Qualitative description	Quantitative description
<i>Benefits</i>	<p>Allows authorities to assess <i>some financial</i> stability risks associated with collateral reuse, but not risks that are related to short-term market movements (procyclicality, sudden price changes).</p> <p>Monthly data quality would be potentially be highest due to the limited number of quality checks required.</p>	
<i>On-going compliance costs</i>	In some cases, respondents indicated that it might be possible to optimise the process sufficiently to implement the reporting with existing resources (rather than additional headcount).	0.1 potential additional headcount (10,000 EUR p.a.) per reporting firm
<i>One-off compliance costs</i>	The frequency of reporting should not have a major impact on the costs resulting from the development of new IT systems and build-up of infrastructure required for integrating and reporting reuse data.	

### 19.2.3 Scope of margin lending

16. In the responses to the Discussion Paper, a number of market participants expressed concern that the definition of margin lending in SFTR could potentially capture a very large number of transactions with no or limited relation to shadow banking activities. Others asked ESMA to restrict the scope of margin lending to prime brokerage, in line with the FSB focus. To further investigate this issue, ESMA asked market participants in the Consultation Paper to describe the type of transactions that may be captured, in order to assess their relevance to the SFTR reporting regime.
17. The transactions mentioned by market participants included private banking and other forms to retail clients, overdraft facilities of custodians, or mergers and acquisitions finance and other forms of non-financial corporate lending. As explained in section 4.2.4.4, the SFTR recital highlights that the Regulation “*follows the FSB Policy Framework (...) under which details of SFTs can be efficiently reported*”. The November 2015 FSB standards for SFT data collection, developed as part of the FSB policy framework, “*only focus on margin lending provided to non-retail clients*”, while the data elements included in the relevant margin lending tables focus on prime brokerage margin lending.
18. For the consistency of the reporting regime ESMA considered these types of transactions case by case in order to formulate a final proposal. The estimated costs and benefits leading to the final ESMA proposal on the scope of margin lending are summarised in the tables below.

Objective	<i>Reporting of margin lending</i>
Option 1	Only include prime brokerage margin lending.
Option 2	Also include Lombard loans, private sector banking, and other forms of lending to retail clients.
Option 3	Also include mergers and acquisition finance, syndicated lending and other forms of corporate lending.
Preferred option	<p><b>Option 1:</b> SFTs cover purely financial transactions, the purpose of which is trading of securities, and which are related to liquidity/maturity transformation, functioning of the financial markets and systemic risk.</p> <p>Considering the focus of the FSB on prime brokerage margin lending, and the objectives of SFTR stated in recital of the Regulation, ESMA believes that some of the transactions cited by market participants bear limited relationship to SFT markets, shadow banking, procyclicality and financial stability.</p>



Option 1	Only include prime brokerage margin lending.
<i>Benefits</i>	<p>In line with the FSB global standards.</p> <p>Limits the number of fields that need to be collected, and facilitates the analysis and interpretation of data pertaining to margin loans and the analysis of leverage in the financial sector.</p>
<i>Costs:</i>	<p>Absence of transaction-level data for other forms of lending where some form of leverage may be provided to clients. However, this risk is potentially mitigated by existing regulations in the banking sector that cover lending to retail and corporate clients, such as the consumer credit directive and the mortgage credit directive.</p> <p>In addition, retail client loans tend to be much smaller than e.g. prime brokerage margin lending, with a much lower loan-to-value ratios as only a small portion of assets serve as collateral.</p>

Option 2	Also include Lombard loans, private sector banking, and other forms of lending to retail clients.
<i>Benefits</i>	Wider set of transactions covered, including transactions that retail clients may use to leverage their assets.
<i>Costs:</i>	<p>The nature and purpose of these loans is of limited relevance to authorities in the context of SFTR, and would make interpretation of the margin lending data very challenging.</p> <p>The proceeds of the loans are typically used for payments unrelated to the initial investments, including for consumption purposes. The frequency of these loans is reportedly also much lower than typical SFTs, which are (for the most part) short-term instruments.</p> <p>The collateral used for private banking loans can be of a very diverse nature and is not limited to financial assets, but may also include physical assets other than commodities (i.e. consumer goods).</p> <p>Moreover, for Lombard loans it is impossible for banks to identify whether the credit is used, per the SFTR definition, in connection with the purchase, selling or carrying of securities.</p>

	<p>Lastly, unlike in typical SFTs, the right of reuse in this context is available in very limited circumstances, and this right is in practice rarely exercised.</p> <p>As an alternative, the need to exclude such transactions from the analysis or aggregates calculated on the basis of SFTR data would likely require the inclusion of new fields, creating additional burden for the reporting counterparties.</p>
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Option 3	Also include mergers and acquisition finance, syndicated lending and other forms of corporate lending.
<i>Benefits</i>	Wider set of transactions covered, including transactions that non-financial corporate may use to obtain leverage.
<i>Costs:</i>	<p>Here again, the nature and purpose of these loans is of limited relevance to authorities in the context of SFTR and would make interpretation of the margin lending data possibly very challenging.</p> <p>Syndicated lending to corporate borrowers in the corporate loan market, including loans relating to the financing or refinancing of infrastructure and asset transactions, mergers and acquisitions (M&amp;A) and corporate reorganisations bear little connection to other types of SFTs and shadow banking.</p> <p>Expanding the scope to capture such transactions could undermine the purpose of the regulation by collecting a large amount of irrelevant information. Furthermore, these transactions are also covered by the existing banking regulations.</p> <p>As an alternative, the potential need to exclude such transactions from the analysis or aggregates calculated on the basis of SFTR data, for analytical purposes, would likely require the inclusion of new fields, creating additional burden for the reporting counterparties and authorities.</p>

#### 19.2.4 Fails curing

19. Some CSDs highlighted that fails-curing mechanisms, i.e. securities lending and borrowing programmes that are designed to reduce settlement fails, were captured in the scope of the SFTR. These mechanisms and current CSD practices are explained in detail in section

4.2.4.2.3. The respondents highlighted that the imposition of a burdensome reporting regime would potentially lead to higher costs and eventually reduce the effectiveness of such mechanisms.

20. The SFTR Level 1 definition of securities lending transactions is relatively narrow, compared to e.g. margin lending where scoping out was a necessity, therefore the inclusion of transactions resulting from fails-curing programme in the scope of SFTR reporting is, in ESMA's opinion, a Level 1 issue. As described in the Final Report, although they are organised differently from securities lending transactions carried out under GMSLA and have different characteristics, fails-curing mechanisms do constitute a form of securities lending.
21. Given the different organisation of fails-curing mechanisms compared to the main form of securities lending, which is done under GMSLA, the key issue for ESMA to consider is how to minimise the burden of reporting for market participants, also with a view to limiting the volume of information to be processed by authorities. In particular, the reporting of collateral could prove unduly burdensome if it results in a counterparty reporting its entire CSD account, given the very large settlement volumes that take place on a daily basis. The costs and benefits of the different options for reporting of the collateral in securities lending transactions from CSD fails curing programmes are summarised below.

<b>Objective</b>	<i>Reporting of collateral in securities lending transactions from fails-curing mechanisms.</i>
Option 1	No reporting of the collateral.
Option 2	Reporting of the collateral where a transfer of collateral between the securities lending counterparties (CSD participants) takes place; where no transfer of collateral takes place, the transaction will be flagged as uncollateralised.
Option 3	Reporting of the collateral where a transfer of collateral between the securities lending counterparties (CSD participants) takes place; reporting of the full composition of the CSD account (collateral portfolio) where no transfer of collateral takes place.
Preferred option	<p><b>Option 2:</b> Option 2 is on average the most balanced option available. Where transfer of collateral does take place, collateral should be reported in line with the reporting requirements of standard securities lending transactions done under GMSLA.</p> <p>Where no transfer of collateral takes place, although the transaction is collateralised by the account of the CSD participant borrowing the securities, the absence of identification of specific collateral securities</p>

	implies that the entire account would need to be reported. Given the volume of transactions settled on a daily basis (several trillion euros per day, according to ESMA data), the burden and costs associated with the full reporting of the securities account composition appear disproportionate compared to the added value.
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Option 1	No reporting of the collateral.
<i>Benefits</i>	Lowest volumes of data.
<i>Costs:</i>	<p>The reporting requirements on collateral would not be in line with other securities lending transactions, including for transactions where a transfer of collateral actually takes place.</p> <p>Moreover, this is in direct contradiction to Level 1 requirements.</p> <p>This could result in the inaccurate assessment of SFT risk exposures between market participants.</p>

Option 2	Reporting of the collateral where a transfer of collateral between the securities lending counterparties (CSD participants) takes place; where no transfer of collateral takes place, the transaction will be flagged as uncollateralised.
<i>Benefits</i>	<p>Limited volumes of data.</p> <p>Allows to monitor collateral flows related to fails-curing mechanisms, and for the correct assessment of risk exposures where there is a transfer of collateral.</p>
<i>Costs:</i>	<p>A distinction between standard securities lending transactions done under GMSLA, and transactions done under fails-curing mechanisms, may be warranted for analytical purposes, as regards fields related to the characteristics of the collateral. However, this could be relatively easily achieved through the use of the Master Agreement field, with the CSD identified as an agent lender.</p> <p>The collateral used for transactions where the securities remain in the securities borrower account would not be reported. These securities are used for multiple purposes, including settlement in commercial bank money. As a result, exposures resulting from the guarantee offered by the CSD to the lender of securities would not be capture.</p>

Option 3	Reporting of the collateral where a transfer of collateral between the securities lending counterparties (CSD participants) takes place; reporting of the full composition of the CSD account (collateral portfolio) where no transfer of collateral takes place.
<i>Benefits</i>	Limited volumes of data.  Allows to monitor collateral flows related to fails-curing mechanisms, and for the correct assessment of risk exposures.
<i>Costs:</i>	A distinction between standard securities lending transactions done under GMSLA, and transactions done under fails-curing mechanisms, may be warranted for analytical purposes, as regards fields related to the characteristics of the collateral. However, as in Option 2, this could be relatively easily achieved through the use of the Master Agreement field, with the CSD identified as an agent lender.  Reporting the full composition of the CSD account used to collateralise the transaction could prove unmanageable to both the reporting entities, TRs, and authorities, given the very large volumes of settlement data (which, in addition to SFTs, also include derivatives and cash transactions). The very large costs associated with this could eventually lead to the disappearance of such fails-curing mechanisms.

### 19.3 Europe Economics Cost-benefit analysis on SFTR (as an annex)



Cost-benefit Analysis on  
Draft Technical Standards  
relating to the Securities  
Financing Transactions  
Regulation: Final Report

15 March 2017

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Europe Economics

# Cost-benefit Analysis on Draft Technical Standards relating to the Securities Financing Transactions Regulation: Final Report

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# 1 Executive Summary

This report analyses the costs and benefits of ESMA's draft technical standards related to the application of the Securities Financing Transactions Regulation (SFTR). The technical standards assessed are: technical standards on the application for registration, or for extension of registration of Trade Repositories; Technical Standards on the content, format and frequency of the reports on SFTs; and Technical Standards on the procedures to be adopted by TRs to verify the completeness and correctness of what is reported to them.

The report has considered both the direct compliance costs to market participants, in both qualitative and, where possible, quantitative terms, as well as undertaking a qualitative analysis of the potential benefits and other — what can be termed 'indirect' — costs. The evidence for this analysis comes from in-depth interviews with a range of different market participants including both trade repositories (TRs) and reporting parties (e.g. agent lenders, assets managers, investment banks, prime brokers, custodian banks and trading venues).

A critical caveat to our analysis is that the robust disaggregation of costs attributable to the SFTR (i.e. the 'Level 1' text) and the costs attributable to ESMA's draft technical standards (i.e. the 'Level 2' text) is in some cases very difficult, or even impossible. Therefore, where it was not possible to provide such disaggregation, we have provided a disclaimer in the text explaining that the cost, or benefit, in question is attributable to both the Level 1 and Level 2 text.

On the following pages, we present the key findings of our analysis for each of the three areas of technical standards assessed.

**Table 1.1: Analysis of Technical Standards on the content, format and frequency of the reports on SFTs**

Content, format and frequency of the reports on SFTs		
	Timing	Qualitative description
<b>Benefits</b>		<p>More granular reporting requirements will promote greater data transparency and consistency, and thus richer analysis of the structure and dynamics of the SFT market, enabling better monitoring, and mitigation, of risks to financial stability. This should promote greater market confidence. The choice of ISO 20022 XML should ensure more standardised reporting and thus reduce TR processing costs (which is preferable to the more flexible approach adopted under EMIR). As an open standard, ISO 20022 XML can cater for future changes to the SFT reporting standards, as well as reporting developments in other financial markets. Basic data quality validations can be embedded in the schema allowing for initial verification of data when the reporting parties generate the report, leading to a reduction in fail rates. ISO 20022 XML promotes greater automation, interoperability and straight-through processing, thereby improving reporting efficiencies. Market participants may be able to benefit by leveraging on past implementations of this standard in other markets or jurisdictions, and/or may stand to benefit from future implementations of ISO 20022 in other areas.</p>
		Quantitative description
		Not assessed.

<b>Compliance costs</b>	<p><b>One-off</b></p> <p>Reporting parties anticipate significant <b>one-off</b> compliance costs. This would first involve a detailed mapping of existing data they collect to the regulatory reporting fields. This includes major changes to IT and data storage systems, including: bringing together data currently located on multiple different systems (through new algorithms and systems interfaces); generating new fields; and extracting, cleaning and analysing relevant data. Such changes would also need to be proceeded by a significant testing phase.</p> <p>The magnitude of one-off costs will depend on a number of factors, including: the extent of existing systems integration; the extent to which existing systems are up-to-date; the market participant's exposure to EMIR; the type of market participant; the type of solution adopted; the size of the firm; and the volume of SFT trades.</p>	<p><b>One-off costs per firm:</b></p> <ul style="list-style-type: none"> <li>- Tier 1 firms: €2.1-€3.1m</li> <li>- Tier 2 firms: €0.3-€0.6m</li> <li>- Other FIs: €28,000</li> <li>- NFCs: €4,000</li> </ul> <p>Total one-off industry costs of <b>€151-€198m</b>.</p>
	<p><b>Ongoing</b></p> <p>Incremental <b>ongoing costs</b> will be significantly below the expected one-off costs. Again these would largely be IT and systems costs (e.g. maintenance), as well data acquisition and storage costs. Additional staff time would be required for monitoring and auditing processes, and manually resolving anomalies.</p> <p><i>Caveat:</i> We note that complete separation of one-off and ongoing costs attributable to the Technical Standards (Level 2) and the SFTR (Level 1) was not achievable. Therefore, as it was difficult for firms to fully distinguish between Level 1 and Level 2 costs, the compliance cost estimates provided in the right-hand column cannot be solely attributed to the latter.</p>	<p><b>Ongoing costs per firm:</b></p> <ul style="list-style-type: none"> <li>- Tier 1 firm: €0.3-€0.6m</li> <li>- Tier 2 firm: €0.05-€0.09m</li> <li>- Other FIs: €6,000-€8,000</li> <li>- NFCs: ~€1,500</li> </ul> <p>Total ongoing industry costs of <b>€44-€59m</b>.</p>
<b>Other costs</b>	<p>The number of reporting fields is considered disproportionately burdensome by many stakeholders, with suggestions that some data fields cannot be straightforwardly mapped to the trades being conducted. The difficulty faced by reporting parties in mapping their specific SFTs to the reportable fields could increase the scope for noise in the reported data, and ultimately could even reduce the utility of data collected by regulators. That said, there must be some limit to how much specificity of any given SFT can be captured through the reporting fields, as increasing the number of reporting fields (to capture more accurately the nuances of different SFTs) would itself place an additional resource burden on reporting parties.</p> <p>There is expectation of low matching rates, which may impose additional manual reconciliation costs on reporting bodies and render the data unusable to regulatory authorities (at least in any timely manner). There are particular concerns with regard to reporting standards on collateral, margin lending and reuse.</p> <p>Permitted tolerances for reporting discrepancies when matching are deemed insufficient to have any material</p>	Not assessed.

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impact on reducing error rates, placing unnecessary cost burden on reporting parties for limited gain.

The incremental impact on transaction costs due to the above compliance costs estimates will be a small fraction of a basis point. This is particularly true in light of the above caveat that not all of the estimated compliance costs can be attributed to the Level 2 text. As a result, we expect any detrimental impact on market volumes as a result of the Level 2 text to be more limited, with perhaps the more marginal trades / more marginal customers dropping out. Any such reduction in trading volume may, in part, be explained by its shift to other jurisdictions, particularly the USA, where the perceived regulatory burden is lower.

One-off costs could be amplified by constraints on existing IT resources, due to the need to meet other concurrent regulatory requirements (e.g. MiFID II and CSDR).

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**Table 1.2: Analysis of Technical Standards on the application for registration, or for the extension of registration of Trade Repositories (TRs)**

Application for registration, or for the extension of registration of Trade Repositories			
	Timing	Qualitative description	Quantitative description
Benefits		Improved transparency of operation and accountability in TRs, thus improving the efficiency and effectiveness of regulatory oversight.	
		Improved transparency on access for reporting parties could facilitate onboarding of clients. Voluntary portability between TRs should assist reporting parties in transferring data across TRs.	Not assessed.
Compliance costs	One-off	Staff resources to compile relevant information and draft relevant documents for the application, including primarily compliance and legal staff and equating to somewhere between several weeks to a few months' work across a small dedicated team.	Total compliance cost across six TRs of <b>€250,000-330,000</b> (i.e. <b>~€50,000 per TR</b> ), on the assumption that operational separation relates to certain systems and procedures and not necessary staff.
		It will be somewhat less resource intensive for those applying for extension of registration (given existing experience with EMIR), though still a material cost. We do not anticipate any full applications for registration, as explained below.	New registrations more costly at <b>€65,000-100,000 per firm</b> , though we do not expect these to occur.
	Ongoing	No ongoing compliance costs identified.	n/a
Other costs		While some TRs already registered under EMIR would enter the SFT market, others might not offer SFT-related services, thus choosing not to provide a one-stop shop service for regulatory reporting requirements that mandate reporting to TRs. Thus, a TR entering the market solely to provide an SFT service appears less likely.	
		Other risks to TRs are the costs of exposing confidential information, and the potential duplication of costs due to operational separation requirements.	Not assessed.
		Although the costs of registration for TRs may be passed onto market participants, we do not deem these pass-through costs to be material enough to have any impact on SFT market volumes.	

**Table 1.3: Analysis of Technical Standards on the procedures to be adopted by TRs to verify the completeness and correctness of what is reported to them**

Procedures to be adopted by TRs to verify completeness and correctness of what is reported			
	Timing	Qualitative description	Quantitative description
<b>Benefits</b>		Availability of more granular and standardised data to authorities will enable improved data analysis, market monitoring and earlier risk identification. Combining with data from other reporting regimes, it will provide a more complete picture of financial market and emerging risks.	
		The common messaging standard would provide consistency and comparability in rejection feedback and so more timely amendments to rejected SFTs. It will also limit TR costs in processing incoming data before transferring to regulatory authorities.	
		The requirement for TRs to feedback the nature of errors to reporting parties should improve reporting standards of market participants over time and thus improve the quality of data available to regulators. Overtime, it should also decrease the burden and cost to reporting parties by reducing their rate of error (and the extra resource demands this imposes).	Not assessed.
		The removal of expired or terminated transactions after one month should reduce burden on TRs, while the requirement that the lack of compliance with business rules or content validations will give rise to automatic rejection should provide greater legal certainty to both TRs and reporting parties.	
		End of day rejection and reconciliation reports could improve straight-through processing and workflow automation.	
<b>Compliance costs</b>	<b>One-off</b>	TRs would face significant initial IT build costs, in order to establish an automated verification process which limits impacts on ongoing workflows. Only minor changes are expected in terms of other systems and controls, human resources and papering.	Total <b>one-off</b> compliance costs across all TRs of <b>€3.4-6.5million</b> for the initial IT build costs.
	<b>Ongoing</b>	By automating the verification process, TRs would aim to largely incorporate the work within existing workflows. That said, we do expect ongoing costs in the form of the human resources required for exception management and service support.	<b>Ongoing</b> costs of exception management and service support across all TRs of <b>€1.6-2.1million</b> per year.
<b>Other costs</b>		Transitional costs until all required standards and protocols are available to all market participants (e.g. UTIs), which may also limit benefits in the short-term.	Not assessed.

## 2 Introduction

This report was commissioned from Europe Economics by the European Securities and Markets Authority (ESMA) to prepare robust cost-benefit analysis of the draft technical standards related to the application of the Securities Financing Transactions Regulation (SFTR).

### 2.1 ESMA's technical standards

The scope of our work covers the following aspects of the SFTR:

- Regulatory and Implementing Technical Standards on the [application for registration, or for the extension of registration of Trade Repositories \(TRs\)](#) (pursuant to Article 5(7–8) of the SFTR).
- Regulatory and Implementing Technical Standards on [the content, format and frequency of the reports on SFTs](#) (pursuant to Article 4(9-10) of the SFTR). These reports are made to TRs.
- Regulatory and Implementing Technical Standards on the procedures to be adopted by TRs to [verify the completeness and correctness of what is reported to them](#) (pursuant to Article 5(7–8) of the SFTR) and Regulatory Technical Standards on data availability (pursuant to Article 12(3) of the SFTR) before passing that data onto the relevant Competent Authorities.

### 2.2 Structure of this report

This final report presents our cost-benefit analysis of the technical standards identified at 2.1 above. This report is structured as follows:

- Section 3 provides an overview of SFTs and of participants in the associated markets.
- Section 4 sets out the results of our research into the likely impacts of ESMA's draft technical standards (including details on the appropriate counterfactual) in the form of qualitative and — where possible within the confines of the data available to us — quantitative cost-benefit analysis.
- An appendix (Section 5) summarises the primary data gathering conducted to underpin the research. The survey used in this work is presented as an Annex.



# 3 Overview of Securities Financing Transactions

In this chapter we provide context to the study by presenting an overview of Securities Financing Transactions.

## 3.1 Types of Securities Financing Transactions and how they work

Securities Financing Transactions (SFTs) include different types of transactions. For the purpose of this report, repos and securities lending were the SFT types considered with priority, given their size and relevance to a large number of market participants which would fall under the scope of SFTR.

**Repo** refers to repurchase agreements, where the collateral provider sells an asset or bundle of assets to the collateral taker at price X with an agreement to buy back the equivalent assets at a later date, or on demand in the case of open repo, at price Y. The difference between price Y and price X is usually annualised to a percentage called the repo rate. Effectively, the repo rate is the collateral taker's rate of return for lending money to the collateral provider. There are different types of repos depending on the contractual agreements and the parties involved, and the process may involve a broker helping the counterparties to initiate the trade. A reverse repo, by definition, is the opposite of a repo, i.e. buying assets first, then selling them back at a later date.

The assets associated with repos are typically bonds and other fixed-income securities, though other types of securities can be used. Repos with equities are called "equity repo" and those using mortgage loans are called "whole loan repo". Repos can also be classified based on the characteristics of the underlying assets. General Collateral (GC) repos use liquid securities that are considered homogeneous and used indiscriminately by the market participants, where the choice of collateral asset is made only after the trade. Special repo, on the other hand, involves securities that have specific characteristics which are in high-demand at a given moment, and in this case the choice of security is known before the trade is executed. As a result, special repos tend to be security-driven, whereas GC deals tend to be cash-driven.

A sell/buy-back is very similar to a repo but with two independent contracts, one for the spot contract, and one for the forward contract.<sup>1</sup> As such, the terminology used is slightly different to repo, with repo generally referring to the price difference as rates, while sell/buy-back refer to a spot price and a forward price.<sup>2</sup>

**Securities lending** is an agreement whereby one party lends a security (or transfers the legal ownership of a security) to another party against a fee for a limited period of time in exchange for either other securities or cash. The process often involves an agency lender. There may also be more than one collateral provider, i.e. there could be multiple collateral providers lending securities via an agent to one collateral taker.<sup>3</sup>

When cash is used as collateral, there is an obligation on the lender to reinvest the cash and 'rebate' the borrower an agreed proportion of the return achieved. In such cases, the reinvestment return is usually deducted from the borrowing fee when the borrower pays the lender. This is a yield-enhancing strategy

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<sup>1</sup> Some people consider sell/buy-backs as riskier instruments than repos as they do not require a mastering agreement between the buyer and seller. The lack of this legal document may increase the risk of the sell/buy-back if the borrower defaults.

<sup>2</sup> ESMA Discussion Paper, pt. 4.2.2.2.1, para. 124.

<sup>3</sup> ESMA Discussion Paper, pt. 4.2.4.2.

frequently used by asset managers and institutional investors. Although most of the revenues from lending government bonds still come from fees, the share of revenue from reinvestment is higher for government bonds than for other asset classes (at around 20 per cent in 2013). The revenues from lending corporate bonds and equities rely almost entirely on fees.<sup>4</sup>

In securities lending, equities tend to be used as collateral to a larger extent than in repos.<sup>5</sup> This gives rise to a particular feature related to securities lending – the right to call. This is that, as equities are usually attached to voting rights and corporate actions, the convention in the securities lending market is for loaned securities to be subject to a right to recall by the lender, in case the lender wishes to exercise his voting rights.

Different users of the SFTs market use it for different economic functions. The main economic functions of SFTs are:<sup>6</sup>

- As a source of funding: repos offer a cheap way of obtaining funding where, if the collateral provider defaults, the collateral taker can sell the collateral to recover its loss. This lowers the credit risk associated with repos. Collateral takers can also re-use the collateral. As a result, repo rates tend to be lower than unsecured loans rates of borrowing due to lower credit and liquidity risks.
- For liquidity and collateral management: an entity can upgrade its assets by lending them against higher-quality non-cash collateral (for instance, to satisfy a central clearing party's eligibility requirements). More generally, the ability to trade using repos provides liquidity in the market for securities. More trading facilitates price discovery which can further improve liquidity.
- As a yield-enhancing strategy: when a party owns a security that is in high demand in the market, the party can lend it and reinvest the cash, thus increasing the overall yield achieved. The party can either enhance its yield through the borrowing fee, or the reinvestment's returns. This increased yield also helps to offset the costs of custody.<sup>7</sup>
- For hedging: the use of repo to fund long positions and cover short positions in underlying assets is fundamental to hedging and the pricing of derivatives.<sup>8</sup> Investors usually need to borrow a security before they can short it. Securities lending is also widely used to prevent settlement fails.
- For dividend tax arbitrage: in the context of securities lending, when equities are loaned, the borrower becomes legally entitled to receive dividends and exercise voting rights. However, the post-tax dividend must be transferred back to the lender. This allows for tax arbitrage, evidence of which can be seen by analysing the seasonal pattern of EU equity on loan around the time of EU dividend payments (April).
- As a means of conducting monetary policy operations in the case of central banks and as a means of providing emergency liquidity to the market in times of crisis.

The Financial Stability Board (FSB) divides SFTs into four different market segments and summarises the main participants in each of these markets as below.

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<sup>4</sup> ESMA (2014) "Report on Trends, risks, vulnerabilities, No. 2".

<sup>5</sup> ICMA (2016) "What is general collateral (GC) repo?" Available at: <http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/frequently-asked-questions-on-repo/11-what-is-general-collateral-gc-repo/#1> [Accessed 29 Sep. 2016].

<sup>6</sup> ESMA (2014) "Report on Trends, risks, vulnerabilities, No. 2".

<sup>7</sup> ESMA (2014) "Report on Trends, risks, vulnerabilities, No. 2".

<sup>8</sup> ICMA (2016) "3. Why is the repo market so important and why has the use of repo grown so rapidly?" Available at: <http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/frequently-asked-questions-on-repo/3-why-is-the-repo-market-so-important-and-why-has-the-use-of-repo-grown-so-rapidly/> [Accessed 29 Sep. 2016].

**Table 3.1: SFTs market segments**

Market Segment	Lender	Borrower
<b>Repo financing</b>	Banks, broker-dealers	Central banks, retail banks, Money Market Funds (MMFs), agent lenders, Non-financial corporates (NFCs)
<b>Inter-dealer repo</b>	Banks, broker-dealers	Banks, broker-dealers
<b>Securities lending</b>	Insurances, pension funds, investment funds, banks, broker-dealers	Banks, broker-dealers
<b>Leveraged investment fund financing and securities borrowing</b>	Banks, broker-dealers, prime-brokers	Leveraged funds, hedge funds

Source: ESMA (2014) “Trends, risks, vulnerabilities”, Financial Stability Board (2013).

The main collateral providers in repos are broker-dealers, investment banks and leveraged investors such as hedge funds. They sell securities to the cash-rich, and often very risk-averse investors such as, money market mutual funds and international institutions. Central banks are also important players in the repo market, although they are out of scope of SFTR. Since the financial crisis, non-financials such as sovereign wealth funds, pension funds, insurance companies, endowments and corporate treasuries have also joined the repo market.

There could be more than two parties involved in a repo transaction. For instance, in a tri-party repo, instead of being delivered to the lender, the collateral is held in a custodian bank or a clearing house. The latter is the tri-party agent responsible for post-trade processing and collateral selection (e.g. quality, liquidity) based on the criteria pre-set by the buyer. In Europe, the principal tri-party agents are Clearstream Luxembourg, Euroclear, Bank of New York Mellon, JP Morgan and SIS. They are usually responsible for managing non-government bonds and equity.<sup>9</sup> As the tri-party agents do not participate in the trade, the associated risks still lie solely with the counterparties.

Securities lending can also involve several parties. As with repos, collateral providers in securities lending also include hedge funds. The collateral takers are typically insurance companies and pension schemes. As the lending process requires investment in systems and human resources, counterparties typically employ agents or intermediaries to manage on their behalves.<sup>10</sup> The collateral taker’s agent is called an agent lender. They negotiate the terms of the loan with the collateral provider’s agent, which is also called a principal intermediary.

It is difficult for market participants to track their collateral assets in SFTs. This is because collateral is typically reused. Some preliminary estimates showed that securities collateral in the EU is reused once on average by EU banks.<sup>11</sup> In addition, in most SFTs, collateral takers are only obliged to return “equivalent” assets, i.e. assets that are deemed to be the same on balance sheet. This fungibility of financial assets can make it difficult, if not impossible, for institutions to track reuse.

<sup>9</sup> ICMA (2016) “What is tri-party repo?” Available at: <http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/frequently-asked-questions-on-repo/24-what-is-tri-party-repo/> [Accessed 29 Sep. 2016].

<sup>10</sup> ISLA (2015) “Securities lending: A guide for policy makers”.

<sup>11</sup> ESRB (2014) “Securities financing transactions and the (re)use of collateral in Europe”.

In the case of cash collateral, an agent lender may pull the funds loaned on behalf of a few clients together into one account (usually referred to as comingled account) and then reinvest this in various other instruments.<sup>12</sup>

As collateral is at the centre of SFTs, the valuation of collateral can affect the SFT market significantly. Usually, collateral is valued at a discount. The degree of the discount depends on several factors including, but not limited to, liquidity risks, counterparty risks and the volatility of the collateral, and its price correlation with the lent securities.<sup>13</sup> The discount is usually referred to as a “haircut”. Depending on the risks, the haircut can differ substantially from one asset to another. Typically, government bonds’ haircut is less than 5 per cent. The haircut for non-government bonds depends on issuer risk and concentration limit. Based on a recent survey by the International Capital Market Association (ICMA), the median of a corporate bond (with 6 years to maturity) is 5.0 per cent, while for a high-yield bond, it is 20.3 per cent.<sup>14</sup>

Another issue that may impact the value of collateral is the eligibility of assets. In the same ICMA survey, 31 per cent of respondents indicated that they do not accept high-yield bonds and 23 per cent not accepting peripheral bank bonds.<sup>15</sup> During a crisis, changes in credit rating can adversely affect the eligibility of assets (e.g. for posting at central banks), with the narrowing range of eligible assets contributing towards the procyclical nature of the market. Any reduction in eligibility of assets could, in turn, reduce the effective value of collateral sharply. The interconnectedness of the market means that such revaluation probably would affect several transactions and counterparties at once.

**Margin lending** is another type of SFT defined by the SFTR. SFTR defines margin lending as “a transaction in which a counterparty extends credit in connection with the purchase, sale, carrying or trading of securities, but not other loans that are secured by collateral in the form of securities”. Unlike repos and securities lending, margin loans usually do not require the pledge, loan or sale of additional collateral.<sup>16</sup> The amount of margin lending required is calculated on a daily basis using factors such as net exposure and counterparty risk profile.<sup>17</sup> Although there is no market data on the volume or value of margin lending in the EU, revenues from margin lending form a ‘non-negligible’ part of market participants’ revenues.<sup>18</sup>

## 3.2 Market size

SFT markets are mainly concentrated in the USA and the EU.

Repo plays a significant role in the EURO money market. The quarterly turnover on repos was around €30 trillion in 2015 for Euro Area banks.<sup>19</sup> ICMA’s most recent survey found that the total value of repo contracts outstanding, for the 72 institutions who participated in the survey, was €5.4 trillion in June 2016.<sup>20</sup>

There are three main EU repo market segments: bilateral repos, bilateral repos cleared through CCPs and tri-party repos. Since the financial crisis, the proportion of repos cleared through CCPs has steadily increased from 40 per cent of the secured EURO money market in 2009 to around 75 per cent in 2015.<sup>21</sup>

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<sup>12</sup> ESMA (2014) “Report on Trends, risks, vulnerabilities, No. 2”.

<sup>13</sup> ISLA (2015) “Securities lending: A guide for policy makers”.

<sup>14</sup> ESMA (2016) “Report on securities financing transactions and leverage in the EU”. See p54, the haircuts analysed in this section are “counterparty risk free”, i.e. it reflects the risks related to the underlying collateral only.

<sup>15</sup> ESMA (2016) “Report on securities financing transactions and leverage in the EU”. See p53.

<sup>16</sup> ESMA (2016) “Report on securities financing transactions and leverage in the EU”.

<sup>17</sup> ESMA (2016) “Report on securities financing transactions and leverage in the EU”.

<sup>18</sup> ESMA (2016) “Report on securities financing transactions and leverage in the EU”.

<sup>19</sup> ECB (2015) “Euro money market survey”.

<sup>20</sup> ICMA (2016) “European Market Repo Survey” Number 31 - Conducted June 2016.

<sup>21</sup> Eurosystem (2015) “Euro money market survey”, September 2015, Chart 28, p16.

According to ICMA's survey, tri-party repos accounted for only 10 per cent of the overall EU repo market.<sup>22</sup> For tri-party repos, government-related assets account for 56 per cent of the total collateral for tri-party agents.<sup>23</sup> Government bonds were the main type of collateral within the pool of EU-originated fixed-income collateral, accounting for 86 per cent in June 2016.<sup>24</sup>

In terms of the currencies of the cash involved, the majority (61.3 per cent) is euros. This is followed by US dollars (17.1 per cent) and UK pound sterling (11.6 per cent). 82.5 per cent of the total value of securities loaned or borrowed are on fixed rate, 10.8 per cent are on floating rate, and the remaining are on open rate.

Repos are mostly short-term in nature. Around 75 per cent of transactions have one-day maturities and less than 3 per cent have maturities longer than a month.<sup>25</sup> In value terms, more than 50 per cent of repos have a term of less than a month, with 23.5 per cent having a one-day term. Repos with maturities of more than a year account for only 1.7 per cent of the total market. Overall, since 2011, there seems to have been an upward trend in the value of repo with a remaining term to maturity of one day and a downward trend in the value of repo with maturity of more than one year. This reflects the increasingly short-term nature of the repos on demand.

In terms of securities lending, the International Securities Lending Association (ISLA) estimates that the global loan balance in June 2015 was €1.8 trillion, up 11 per cent from a year ago. About 49 per cent of the €1.8 trillion are bonds, while the rest are equities. EU lenders represent one third of the global total. ESMA estimated that the size of the EU securities lending market is around €500 billion. Global revenues from securities lending are estimated to be more than €8 billion per annum.

### 3.3 Regulatory concerns

The extensive use of repos has caused some regulatory concerns. The European Systemic Risk Board (ESRB) has summarised the key financial stability risks as:<sup>26</sup>

- **Facilitation of credit growth:** SFTs may contribute to credit growth when the cash borrowed is reinvested into debt instruments. The European financial market relies heavily on the ability to borrow and lend on the SFT market.
- **Pro-cyclicality of system leverage:** ESMA (2016) provides a good summary on the mechanisms of effect of pro-cyclicality in academic literature.<sup>27</sup> Several studies find that changes to margins and haircuts at times of stress tend to increase cyclicality in the system (see Armakola et al. (2016)<sup>28</sup>, Gorton and Metrick (2009)<sup>29</sup> and BIS (2010)). Other studies found that reduced lending volume and withdrawal of credit lines were the main reasons behind the pro-cyclicality impacts (see Adrian et al. (2014)<sup>30</sup> and Comotto (2012)<sup>31</sup>). The lack of granular data hampers a comprehensive analysis of pro-cyclicality in the EU market. That said, these studies all agree that the use of repos contributes to higher leverage in the financial system and stronger pro-cyclicality.

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<sup>22</sup> ICMA (2016) "European Market Repo Survey" Number 31 - Conducted June 2016.

<sup>23</sup> ICMA (2016) "European Market Repo Survey" Number 31 - Conducted June 2016.

<sup>24</sup> ICMA (2016) "European Market Repo Survey" Number 31 - Conducted June 2016.

<sup>25</sup> ESMA (2014) "Report on Trends, risks, vulnerabilities, No. 2".

<sup>26</sup> ESRB (2013) "Towards a monitoring framework for securities financing transactions".

<sup>27</sup> ESMA (2016) "Report on securities financing transactions and leverage in the EU".

<sup>28</sup> Armakola, A., Douady, R., Laurent, J. P., & Molteni, F. (2016) "Repurchase agreements and systemic risk in the European sovereign debt crises: the role of European clearing houses".

<sup>29</sup> Gorton, G. and A. Metrick (2012) "Securitized banking and the run on repo". *Journal of financial economics*, vol. 104(3), pp. 425-451.

<sup>30</sup> Adrian, T., B. Begalle, A. Copeland and A. Martin (2014) "Repo and securities lending". *Risk Topography: Systemic risk and macro modelling*, University of Chicago Press, 131-148.

<sup>31</sup> Comotto, R. (2012) "Shadow banking and repo".

- **Maturity and liquidity transformation:** banks and broker-dealers act both as borrowers and lenders in the market. They use techniques such as matched-book trading to net off assets so that they do not appear on the balance-sheet, which reduces capital requirements and lowers the cost of capital. However, the maturities of SFTs rarely match perfectly. Banks may need to finance long-term illiquid assets through short-term liquid assets, which often results in maturity transformation. This is often the case for big insurance companies. Such a strategy was one of the reasons that caused AIG to run into liquidity stress during the financial crisis.<sup>32</sup>
- **Interconnectedness and contagion channels:** linkages between banks and the shadow banking system may give rise to contagion channels through which shocks can be transmitted. As discussed above, the reuse of collateral together with the use of intermediaries (e.g. custodian banks and agent lenders) have generated a complex web of interconnectedness. This means that any changes in the value of collateral or conditions of borrowing would be amplified along these different channels.
- **Collateral fire-sales:** collateral sales under distressed market conditions may depress asset prices and contribute to a downward spiral. A reduction in the value of collateral may trigger margin calls, which may require even more collateral to be sold urgently. This further depresses asset prices and can thus trigger more collateral fire-sales.

The risks outlined above are reinforced by a lack of transparency in the SFT market. In particular, the reuse of collateral creates complex collateral chains that are difficult to track and understand. This is especially problematic during periods of market stress when companies try to recall collateral.<sup>33</sup> In addition, operational risks in relation to asset delivery, collateral valuation, margin calls and substitution may amplify risks still further (because Straight-through Processing, STP, remains relatively rare).

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<sup>32</sup> Adrian, T., Begalle, B., Copeland, A., & Martin, A. (2012) "Repo and securities lending" (No. w18549). National Bureau of Economic Research. [https://www.newyorkfed.org/medialibrary/media/research/staff\\_reports/sr529.pdf](https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr529.pdf).

<sup>33</sup> Singh, M. (2011) "Velocity of Pledged Collateral: Analysis and Implications" IMF VWP/11/256 <https://www.imf.org/external/pubs/ft/wp/2011/wp11256.pdf>.



## 4 Cost-Benefit Analysis

This section sets out the cost-benefit analysis of ESMA's draft technical standards relating to the SFTR. The draft technical standards assessed relate to:

- The content, format and frequency of the reports on SFTs (Reporting on SFTs).
- The application for registration, or for the extension of registration, of TRs.
- The procedures to be adopted by TRs to verify the completeness and correctness of what is reported to them.

Each of these technical standards are analysed in turn.

The first stage in assessing the impacts of ESMA's draft technical standards involved mapping out the economic logic connecting the technical standards to different expected costs and benefits, and other market impacts. We call such a map the "mechanisms of effect". This initial analysis drew on responses to the European Commission's consultation on the SFTR, as well as responses to ESMA's discussion paper on the draft technical standards.

The second stage was to analyse the findings of the stakeholder engagement programme, to determine to what extent stakeholder evidence supports and/or contradicts the expected costs and benefits set out in the first stage of the analysis. This includes both quantitative and qualitative analysis of the findings from the stakeholder engagement programme.

### 4.1 Reporting on SFTs

#### 4.1.1 What does the SFTR say?

The SFTR Article 4 states that:

9. In order to ensure consistent application of this Article and in order to ensure consistency with the reporting made under Article 9 of Regulation (EU) No 648/2012 and internationally agreed standards, ESMA shall, in close cooperation with, and taking into account the needs of, the ESCB, develop draft regulatory technical standards specifying the details of the reports referred to in paragraphs 1 and 5 of this Article for the different types of SFTs that shall include at least:

(a) the parties to the SFT and, where different, the beneficiary of the rights and obligations arising therefrom;

(b) the principal amount; the currency; the assets used as collateral and their type, quality, and value; the method used to provide collateral; whether collateral is available for reuse; in cases where the collateral is distinguishable from other assets, whether it has been reused; any substitution of the collateral; the repurchase rate, lending fee or margin lending rate; any haircut; the value date; the maturity date; the first callable date; and the market segment;

(c) depending on the SFT, details of the following:

(i) cash collateral reinvestment;

(ii) securities or commodities being lent or borrowed.

In developing those draft technical standards, ESMA shall take into account the technical specificities of pools of assets and shall provide for the possibility of reporting position level collateral data where appropriate.

[...]

10. In order to ensure uniform conditions of application of paragraph 1 of this Article and, to the extent feasible, consistency with the reporting pursuant to Article 9 of Regulation (EU) No 648/2012 and harmonisation of formats between trade repositories, ESMA shall, in close cooperation with, and taking into account the needs of, the ESCB, develop draft implementing technical standards specifying the format and frequency of the reports referred to in paragraphs 1 and 5 of this Article for the different types of SFTs.

The format shall include, in particular:

- (a) global legal entity identifiers (LEIs), or pre-LEIs until the global legal entity identifier system is fully implemented;
- (b) international securities identification numbers (ISINs); and
- (c) unique trade identifiers.

In developing those draft technical standards, ESMA shall take into account international developments and standards agreed at Union or global level.

The objective of standardising the details, format and frequency of SFT reporting is to harmonise these transparency rules across Member States. This would facilitate comparison of data and so help authorities to better understand the potential risks that SFTs and SFT market participants pose to the system. ESMA is required to draft the technical standards related to the reporting obligations for different types of SFT. These standards should be “based on open and transparent standards” and “they should be subject to robust governance from regulatory community”.

The SFTR text does not identify a specific standard to adopt. However, in seeking to contain any additional costs, ESMA, to the extent possible, is mandated “to minimise overlaps and avoid inconsistencies between the technical standards” adopted pursuant to the SFTR and those adopted pursuant to Article 9 EMIR. The legal framework for the reporting prospect should be the same as EMIR where possible. ESMA was also asked to explore position-level collateral data reporting where appropriate.

#### 4.1.2 What do the ESMA draft Technical Standards say?

ESMA’s interpretation of “internationally accepted standard” is to apply ISO 20022. As part of the ISO 20022, a common XML schema would be developed to standardise reporting to TRs. The schema would set out the structure on what elements to include, the order of how they should appear and which fields are mandatory and optional.

The reporting obligations are applicable to all counterparties to an SFT. These include:

- Investment firms authorised in accordance with Directive 2014/65/EU of the European Parliament and of the Council.
- Credit institutions authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council or with Regulation (EU) No 1024/2013.
- Insurance or reinsurance undertakings authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council.
- UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC.



- AIFs managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU.
- IORPs authorised or registered in accordance with Directive 2003/41/EC of the European Parliament and of the Council.
- CCPs authorised in accordance with Regulation (EU) No 648/2012.
- CSDs authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council.
- Third-country entities which would require authorisation or registration in accordance with the legislative acts referred to above if they were established in the EU.<sup>34</sup>

According to the SFTR, where a financial counterparty concludes an SFT with a non-financial counterparty which does not exceed the limits of at least two of the three following criteria (balance sheet total of €20,000,000, net turnover of €40,000,000 and average number of employees during the financial year of 250), then the financial counterparty is responsible for reporting on behalf of both counterparties.

In terms of reporting the relevant business and life cycle events for an SFT, ESMA proposes to broadly follow the approach in EMIR. ESMA has standardised the counterparty names as “collateral taker” and “collateral provider”. In addition, ESMA has provided a detailed description of the different trade events within the trade scenarios and the reporting requirement for each participant.

ESMA proposes the data elements to be grouped under four categories. These relate to:

- The parties involved in the SFT.
- The economic terms of the loan and of the collateral (as well as the valuation of the collateral).
- The margin posted or received pertaining to centrally cleared SFTs.
- The re-use of collateral pertaining to all SFTs.

ESMA also laid out the structure and detailed content of the report, including but not limited to, identification of branches, UTI generation and linking of SFTs.

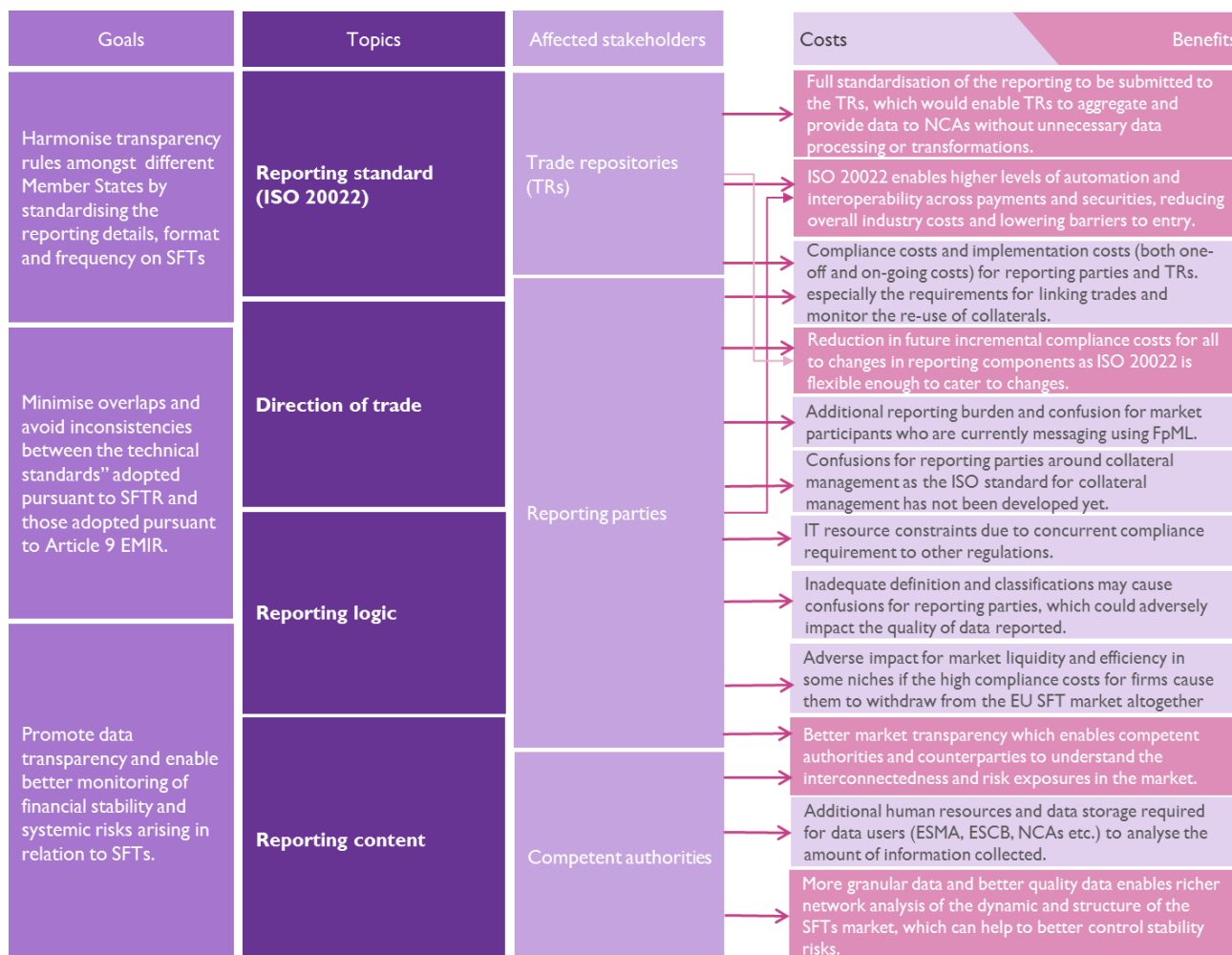
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<sup>34</sup> ESMA TS, point 88.

### 4.1.3 Expected impacts

The costs and benefits of the reporting standard relate to the adoption of ISO 20022 (the overarching format) and to the detailed specifications relating to the content and structure for the report. Figure 4.1 below maps out the mechanisms by which costs and benefits may arise in relation to these technical standards.

**Figure 4.1 Mechanism of effect for RTS on reporting on SFTs**



#### Benefits

One of the key goals of the RTS on reporting standards is to promote data transparency and thus enable better monitoring, and hence mitigation, of financial stability and systemic risks arising in relation to SFTs. Information on collateral collected under SFTR would fill existing data gaps in this area and enable richer network analysis of the structure and dynamics of the SFTs market. For instance, data on the reuse of collateral can help to unravel the interconnectedness of the chains of SFTs, while data on the haircut of collaterals can help to give a more comprehensive picture on pro-cyclicality in the EU financial system. Also, the ability to link SFTs would enable regulatory authorities to have better visibility on their use and movements. Together, SFTR allows regulators to monitor the build-up of risks, understand the risk exposure created by the underlying trades and identify financial stability risks.

Of course, although the beneficial impacts on oversight and regulatory monitoring will be first of all driven by the requirements of the Level 1 text (as described above), the detailed specifications of the Level 2 text may act so as to amplify these benefits. Indeed, most stakeholders expected regulatory oversight to improve as a result of the Level 2 text, with about 50 per cent anticipating a further minor effect on improving regulatory oversight, and a smaller group expecting ESMA's technical standards to contribute to significant

improvements. In this regard, the RTS on reporting standards were considered of similar significance in improving regulatory oversight to the RTS on procedures for TRs to verify the completeness and correctness of data reported to them, but of more significance than the RTS on registration and extension of registration. One trading venue also expects that the better data availability and quality would help authorities to detect cases of market abuse.

The interview evidence suggested that, while all types of stakeholder are generally supportive of the goals of greater transparency and improved regulatory oversight, they were of the view that the RTS would be disproportionately burdensome for reasons we now explore.. Some respondents were concerned about the sheer volume of data being collected by ESMA and the authorities, that the important messages could be lost or misinterpreted. Therefore, it was suggested that the data itself can only achieve so much and that it would need to be supported by better discussions with stakeholders in order to interpret the meaning behind it. A number of stakeholders (particularly from investment banks) were of the view that some of the fields being requested did not match the economics of their trading activity. For example, one investment bank active in securities lending suggested that, from the perspective of their own activities, up to 80 per cent of the required data fields possessed little economic meaning from a trading perspective and thus could ultimately be of only limited use to the authorities. If correct, these factors could create noise in the data sent to supervisors, possibly limiting the increase in regulatory oversight achieved or, at least, making the achievement of such increased oversight more difficult. Indeed, another respondent said that it would require strong data analytics on the part of the regulators, in order to unlock the desired benefits to regulatory oversight. On the other hand, the design of the fields is driven by supervisory requirements, not those of the supervised.

The reporting requirements, by improving transparency and oversight (albeit potentially subject to the limiting factors described in the previous paragraph) should by extension improve market confidence. A majority of surveyed stakeholders were of the view that the reporting standards would have a positive effect on market confidence (and that so too would the RTS on the procedures for TRs to verify the completeness and correctness of what is reported to them). That said, one reporting party noted that this is a different market to the one that existed before the financial crisis, having evolved from a large unsecured overnight financing market to a more secured market, with significant buffers provided by applying appropriate haircuts and margins. Thus, failure rates are now very low and confidence has improved, but the balance of views was that the technical standards could improve market confidence still further.

The choice of ISO 20022 XML as the reporting standard should also be beneficial. A harmonised XML schema would help to ensure full standardisation of the reporting to be submitted to the TRs. This standardisation would enable TRs to aggregate and provide data to NCAs without unnecessary data processing or transformations, and thus reduce costs associated with data processing. One interview respondent said that this is more beneficial than the approach adopted under EMIR, which allowed for more flexibility but ultimately led to firms submitting different standard messages which required further cleaning by the TRs. In this respect, the more prescriptive the messaging standard is, the less open it is to individual firm interpretations and the lower any further cleaning and processing costs are likely to be.

ISO 20022 is also beneficial as it is an open standard and thus able to cater for future additional/new regulatory reporting functionalities including changes to the SFT reporting components. ISO 20022 has an established process for maintenance and evolution. Another advantage is that basic data quality validations can be embedded in the schema, allowing for the first verification of data when the reporting counterparties generate their reporting.

The adoption of ISO 20022 should also lead to higher levels of interoperability across payments and securities, increasing the levels of automation and hence lowering the overall industry costs and, potentially, lowering market entry barriers as well. One interview respondent noted that trade automation is still at low rates (well below 10 per cent), but with mandated matching they expect more consistency and improved

standards. The respondent believed that this would lead to further reduction in fails, less burdens on trade support teams, more straight-through processing and, ultimately, a reduction in ongoing costs.

ISO 20022 is already being adopted globally in the financial industry, and thus firms may be able to leverage existing experience with ISO 20022 to smooth the transition process and limit adoption costs. Central banks and market infrastructure across the world are increasingly using the standard, with around 70 payments and securities clearing and settlement systems implementing ISO 20022.<sup>35</sup> ISO 20022 standards have also been developed (or are under development) across many financial business processes including retail and wholesale payments, foreign exchange, investment fund processing, clearing, collateral management, settlement (e.g. T2S), and asset reconciliation and transaction reporting (e.g. MiFID). Not only may firms be able to benefit from their past experiences of transitioning onto the ISO 20022 standard, but they may also benefit in the future if regulation in other product areas or jurisdictions mandates a transition to the ISO 20022 standard. However, the degree to which such leveraging of existing resources and experiences is possible may be limited to the extent that different business practices within a firm are operational separated/siloed. According to one reporting party, for example, their team dealing with SFTR are unlikely to have ever seen an EMIR report before.

### Direct compliance costs

#### *One-off costs*

Reporting parties expect to face significant one-off costs in order to comply with the new reporting requirements. Most reporting parties we engaged with expected to have to make major changes to IT and data storage systems. The key reasons provided for this were that:

- The reporting fields required by the SFTR are currently spread across multiple different systems. As such additional inter-operability and connectivity will be required to match and encode (through linking algorithms) the necessary data to the relevant fields. In some cases, e.g. agency lending, only one party may have access to the full data set, at least at the scheduled reporting date.
- A mapping exercise would generally be necessary to identify how to complete data fields. The difficulty of this would vary by participant and also SFT activity (with repo seen as a better 'fit' than other SFTs). It is considered that even those stakeholders with relatively more data would struggle to fill all of the required data fields, with one investment bank, for example, considering itself able to readily complete only 25–40 per cent of the matching fields. Hence, for the majority of parties, there would likely be a need to construct complex algorithms to pull data from different systems and/or build additional interfaces, in order to bring all required data into one place (which may also involve accessing data from outside the firm). The process of extracting, cleaning and standardising data could also be costly and, as with most IT projects, the process would involve the costs of substantial testing.

With respect to the above costs it should be recognised that several of the reporting fields specified in the Level 2 text are a direct result of the requirements of Article 4(9) of the Level 1 text, and therefore that the costs described above accrue, in part, as a direct result of the Level 1 text. Nevertheless, the more detailed specifications of the Level 2 text produce additional cost burdens in the ways described above.

These IT costs may be further amplified if existing IT resources are sufficiently constrained by the concurrent requirements of other regulations, e.g. for compliance with MiFID II and CSDR, such that additional headcount are required to cope with the extra demands placed on the firm by both Level 1 and 2 requirements of the SFTR.

In addition to the above, stakeholders also cited reasons for significant IT costs which related to the requirements as set down in the SFTR itself (i.e. Level 1), rather than ESMA's technical standards (Level 2).

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<sup>35</sup> SWIFT (2016) "SWIFT Response to ESMA's consultation paper on Draft technical standards on access to data and aggregation and comparison of data across TR under Article 81 of EMIR".

We list these concerns below, but stress that they do not form part of the cost-benefit analysis of ESMA's technical standards:

- Some new fields need to be generated. The RTS require counterparties to be identified by LEI. However, not all market participants have LEIs in their primary books and record systems. As such, some additional costs will need to be incurred in generating LEIs for these counterparties. Similarly, UTI and ISINs are not available for every counterparty / trade.
- There was specific concern in relation to collateral reporting. In margin lending, for example, a bundle of securities (conceivably involving 100s or even 1000s of ISINs) may be used as collateral under International Prime Brokerage Agreement, with only the net exposure between counterparties set against this (i.e. there is no 1:1 matching, unlike with repo). Participants were concerned about finding a meaningful way of reporting this — and also of doing so by value date.

Returning to the issue of mapping by reporting parties, the perceived difficulty among some market participants is that some of the reporting fields lack proper economic meaning in the context of the types of SFTs they trade. As a result, some stakeholders were of the view that this reporting exercise would add no value to their own business and, more importantly from the perspective of this study, could mean that supervisors receive information containing significant noise and that would therefore be of limited use to them (or, at least, require additional efforts by the supervisors to cleanse and make sense of the data received). However, the reporting fields are designed to meet a supervisory objective, and to cover a multiplicity of different SFTs and organisational settings at the reporting parties. It follows that replicating exactly any given reporting entity's data processing system is perhaps somewhat unlikely. Similarly, without introducing a significant number of additional fields specific to different types of SFTs, there is obviously a limit to how much a common set of reportable fields can capture all the different nuances of the SFT market. Therefore, some compromise between the number of reporting fields and the specificity achieved is clearly desirable.

In addition to the above, some stakeholders indicated that there would need to be major changes to other systems and controls. We elaborate further below on which reporting requirements would demand more changes (see 'Costs related to specific reporting requirements').

Few firms expect significant impacts on human resources, staff re-training and re-papering of agreements with other market participants. That said, it was felt that the impact on re-papering is highly dependent upon whether delegated reporting is to be offered, which is still under consideration.

Although firms with prior experience in ISO 20022 are likely to incur lower costs than those that are currently messaging on FpML standard, deviations for the reporting details for SFT may still cause extra adaptation costs. In fact, the few participants currently using ISO 20022 still expect moderate or significant operational difficulties in implementation.

Our analysis suggests the magnitude of one-off costs faced by affected parties would be driven by the following list of factors. It should be recognised that these factors will also be important determinants of the scale of costs faced by market participants in relation to the Level I text (and, indeed, in relation to other regulatory regimes undergoing implementation). The key determinants of a firm's specific costs are:

- **The extent of existing systems integration.** IT systems are organised differently across organisations. Some organisational systems are more centralised and connected, while others are more dispersed and isolated. Based on the observation that the data requirements are likely to require reporting parties to pull data from various sources, those parties with a more centralised data structure (e.g. a data hub) could find it relatively easier to implement. That said, a more integrated system is also likely to mean more testing to ensure that the changes are compatible across all systems, without disrupting clients' normal business activities.



- **The extent to which existing systems are up-to-date.** As well as the extent of system integration, the extent to which systems are up-to-date with latest technologies is another important cost driver. While some firms have kept their technology up-to-date, others continue to operate on legacy systems. Those with older systems would face higher costs redeveloping and/or recoding their existing systems, giving those with better technology a competitive advantage.
- **The market participant's exposure to EMIR.** Our evidence on the impact of already being compliant with EMIR on the costs of becoming compliant with SFTR are mixed. Some stakeholders suggested that firms may benefit, to some extent, from potential synergies of having already implemented EMIR, but that such synergies would be limited. Whilst the SFTR schema is similar to that for EMIR, it is the difference in the finer details that will drive most additional costs.
- **The type of market participant.** Not all fields required are available to reporting parties at present, as firms usually only keep records of the data that are relevant to them. In addition, many (smaller) buy-side firms still currently do their collateral management in Excel for example, while non-financial firms may have significant difficulties in complying with the reporting requirements, particularly with tri-party repos where the collateral changes on a daily (and even intra-day) basis. We expect a large proportion of non-SME, non-financial companies to outsource their entire reporting to third parties.<sup>36</sup>
- **The type of solution adopted.** Reporting parties could choose to build the solutions in-house, outsource part of the data enrichment, or outsource the entire reporting process to a third party. The decision is likely to be guided by businesses' own cost-benefit analyses of the different options and their risk appetite. Sometimes, even though it may be cheaper to outsource the entire process, firms may still prefer to do it in-house due to data confidentiality concerns. Some firms may also use the regulation as a trigger for further consolidation of existing systems for efficiency purposes (which could be beneficial ultimately by, say, promoting straight-through processing of trades in the future). However, though the cost of implementation is likely to be more significant for these companies, this inflated cost is a reflection of business preference rather than regulatory mandate. For those firms who prefer the outsourcing route, most are looking for a holistic package which covers all SFTs. It is not yet clear what the market capacity would be in terms of such suppliers (though there are likely strong network effects that would significantly limit how many of such suppliers would be viable). Many firms are still waiting for the Level 2 text to be finalised before making a decision on the type of solution to adopt, with several still in discussion with potential suppliers on their service and price offerings. The pricing structure for these solutions is not confirmed either although it is likely to be geared towards a per-transaction basis. Given that market participants do not place much additional value on the reporting package, the ability to price much above utility levels could even so likely be constrained. The introduction of ISO 20022 is expected to reduce the barriers to entry (and to exit) of third party reporting providers).
- **The size of the firm.** The volume of reporting requirements would be particularly burdensome for NFCs and smaller financial participants (e.g. regional banks, smaller buy-side firms) who only trade a few times a year in this market. This is both the result of the reporting obligation set down in SFTR (Level 1) as well as the granularity of those reporting obligations as set down in ESMA's technical standards (Level 2), though in practice it is inherently difficult to disentangle the relative impact of each.
- **The volume of SFT trades.** Repo and securities lending markets are much larger than the commodities lending or even margin lending markets. Hence, although the cost of implementation for repo and securities lending is likely to be larger in real-terms, this is not necessarily in relativistic terms. In particular, stakeholders have expressed concern that, as the commodities lending business is very small, the reporting requirements are particularly onerous for market participants in the commodities lending

<sup>36</sup> We note in passing that, despite the Consultation Paper making it clear that collateral reporting and margin lending are to be made on a daily basis (at end of day), some stakeholders were confused about the required frequency of reporting and stated that, if all intra-day collateral changes needed to be reported, then this would impose significant costs on them.

context. This additional burden is a consequence of both the Level 1 and Level 2 text, although again there is difficulty in separating out these effects.

### *Ongoing costs*

Market participants expect incremental ongoing costs to be significantly below one-off costs. Those costs expected are largely IT and system costs, with at least half expecting these to be moderate ongoing cost drivers. Costs of data acquisition and storage could also be non-trivial contributors to ongoing costs, due to the additional storage capacity needed as a result of the more detailed reporting requirements set out in the Level 2 text. Very few stakeholders foresee any material ongoing costs in terms of staff training or consultancy and legal fees.

Stakeholder suggested that processes would not be fully automated. Additional staff time would therefore be required to monitor and check data and manually resolve anomalies. The process of data extraction and consolidation from multiple systems would also require monitoring, checking and auditing. The extent of such ongoing costs would depend on the clarity and complexity of the ESMA's final text relative to existing practice.

While the above costs will in part be a reflection of the requirements of the Level 1 text, the format and content of reporting, as set out in ESMA's Technical Standards, will nevertheless be an important determinant of the likely scale of such costs. We note here that it is difficult in practice to separate out the extent to which these costs accrue in relation to either Level 1 or Level 2, as this requires a hypothetical assessment of the costs that would be incurred due to the reporting requirements in the absence of any specifications about the precise format or content of these reports (i.e. the cost of Level 1 in the absence of Level 2). This is of course a difficult exercise for firms to undertake, as it requires an assessment of the costs of reporting without any specification of how or what you are required to report. What can be said is that, while the types of costs set out above will already be incurred as a result of the Level 1 text, the Level 2 text will nevertheless go some way to determining the likely scale of these different cost types.

### *Costs related to specific reporting requirements*

At a high level, the number of fields required needs to be sufficient to monitor the risks in the SFT market. However, many market participants in our fieldwork considered some of the requirements either unnecessary or too granular, and as such potentially unhelpful to ESMA and NCAs in understanding market risks. We discuss the more frequent issues raised by stakeholders in detail below.

Market participants expressed concern that the sheer volume of data being collected could mean that ESMA and competent authorities become lost in the data. While this may be considered a risk of collecting large volumes of data, if the reporting requirements are not defined at a sufficiently granular level, then there are more likely to be differences in interpretation across market participants, such that more substantial cleaning / manual matching (between counterparties) is required to reconcile SFT data.

The scope of the required matching fields was a particular concern. On the one hand, if most fields are non-matching, then competent authorities and TRs may struggle to identify the right field to use for analytical purpose. On the other hand, as more data fields are required to be matched, the error rate would likely increase and so too would the manual reconciliation costs.

In the collateral reporting fields, stakeholders believe that the timing requirement could cause significant problems. This is because values are not fully set until US markets close (as US Treasuries are a frequent component in collateral pools), which would therefore not be adequately known on value date (although such values should be known at some point on value date plus one ('V + 1')). In effect, the argument being made is that the SFTs affected are not fully concluded until the US markets close. However, having taken into account feedback to the consultation paper, ESMA's RTS now permit reporting by V + 1 and, therefore, such concerns appear to have been addressed.

Similarly, haircut reporting could depend on mark-to-market values of particular assets which will vary by participant, with some stakeholders of the view that the permitted tolerances are unlikely to be sufficient to avoid a mismatch. It was instead felt that an approximate figure could be inferred by ESMA from the other data, or else ESMA should provide additional guidance to help coordinate reporting by market participants.

TRs' concerns were primarily that the current Level 2 text is not prescriptive enough.<sup>37</sup> This is because, where room for interpretation presently exists in the market, there would be a cost to the market of standardising that interpretation under the Level 2 text. One example provided by TRs relates to the process of generating UTIs (despite ESMA having produced a full article explaining this) where, if there is an agreement between counterparties, then the entity responsible for generating the UTI would be agreed by the counterparties. This leaves room for interpretation, as formats will differ and the assignment of responsibility is not legally mandated. It could also lead to confusion amongst counterparties and render reported data less useful (at least for a transitional period). Absent industry standards for the use of reference data, mismatches will persist. Low matching rates are likely to either impose a significant cost on market participants in terms of manual reconciliation, or else make the data unusable (at least in a timely way) for competent authorities.<sup>38</sup>

Most market participants consider the standards around collateral reporting, margin lending and the re-use of collateral as the most operationally difficult and costly to comply with. Given the nature of the market, some of the reporting fields are not considered to be achievable at all. However, some of these concerns relate to the Level 1 text, not ESMA's Level 2 technical standards (as market participants may consider the Level 1 and Level 2 text collectively when evaluating the potential costs and benefits, rather than ESMA's Level 2 text in isolation). Below we set out the issues raised by stakeholders around reporting requirements which specifically relate to the Level 2 text:

- **Data related to re-use, collateral and margin reporting.** Most counterparties expect reporting requirements related to re-use, collateral and margin reporting to cause significant operational difficulties. One stakeholder explained that information on collateral related to SFTs are not stored at a trade level; instead, most SFTs are covered by collateral pools which means that for agency trades a single collateral pool will often be used for multiple underlying principals. In addition, there is usually a market value table for the whole portfolio, with banks typically taking a positional look to consider the overall risk exposure. Hence, a lot of the required data is not stored on an individual loan level and there is no data linking the loan directly to each trade. The Final report and the technical standards on reporting envisage the linking between the collateral data and the loan data where collateral is allocated on a net exposure basis. Needless to say, the information should be accurately reported in order to ensure the correct assessment of exposures. One counterparty saw these requirements as 'unnecessarily burdensome' given the number of trades they execute. That said, we recognise that some of these data requirements are specified in Level 1 text (e.g. LEIs and UTIs), and are thus not a result of ESMA's technical standards.
- **Infeasible reporting content.** Certain proposed logics could prove to be difficult to understand or costly to implement. For instance, it is difficult to report SFTs from a pool of securities that belong to different funds and their subsequent modifications. In these circumstances, although there is a general need to identify counterparties in order to achieve greater transparency, any allocations made in order to comply with the reporting requirements may need to be somewhat arbitrary and, as such, the benefits to improved transparency of SFTs could be fairly limited.
- **Volume of reporting.** Firms need to decide what to report on. Unlike repo which typically only requires a confirmation of the initial transaction, securities lending reporting is considered life-cycle-heavy with multiple modifications over its life cycle — which could even involve three to four reporting activities

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<sup>37</sup> In fact, learning from the EMIR experience, some of the TRs interviewed are advocating a more prescriptive blueprint from ESMA on the SFTR reporting fields. This will in part be achieved by the use of ISO 20022 XML schema as mandated in the Level 2 text (see discussion of 'Benefits' for more details).

<sup>38</sup> The view of one investment bank was to start with fewer matching fields and, as those fields become standardised, to then add more matching fields over time.



happening in one day. Although the requirement to report on modifications to transactions stems from the Level 1 text, it is the granularity of reporting required as a result of the Level 2 text which means that there is a large volume of data to be reported each time the transaction is modified. A counterparty would prefer only to report on economically important information, but it is not currently clear how this is to be understood by stakeholders how in practice when considering modifications and their possible reporting (i.e. what tolerance there will be around this).

- **High number of required matching fields.** Most counterparties expect that the sheer number of required matching fields would cause significant ongoing costs (despite ESMA having already reduced the number of matching fields after taking into account stakeholder feedback to their Discussion Paper). These ongoing costs are in the form of additional headcount to support manual reconciliation of field mismatches.<sup>39</sup> Matching (i.e. a TR's reconciliation of data sent by two counterparties to a given SFT) requirements perceived by stakeholders to be particularly difficult, and thus susceptible to low matching rates, included UTI matching, reference data matching (floating rate) and type of collateral matching.<sup>40</sup> Some stakeholders said that the granularity required for SFTR goes beyond what larger firms need for risk management, with permitted tolerances not sufficiently broad to make any notable difference to these matching rates.
- **Tracking collateral using ISINs.** There could be technical difficulties with regard to tracking collateral using ISINs, especially when there are a high number of ISINs. For instance, if there are a thousand ISINs within a collateral pool and that needs to be matched, then stakeholders suggested that this may cause some difficulties as the system may not be able to handle this much data in one field. However, while this may have represented a more material challenge under certain existing reporting standards, however, the specification in ESMA's RTS of ISO 20022 XML as the SFT reporting standard should mean that this perceived challenge should be lessened in practice.

In addition to the above, stakeholders also raised concerns which relate more directly to the Level 1 text. Although we acknowledge that these issues could have significant cost implications, it should be stressed that these costs are not the result of ESMA's technical standards but rather the underlying SFTR text. The key issues raised in this respect were:

- **Infeasible timelines.** Some of the proposed timelines for reporting and reconciliation might be difficult, inappropriate or even infeasible for market participants. For instance, SFTR requires details of SFTs to be reported on T+1 and related collateral to be reported between T+1 and S. However, some respondents noted that, under current processes, some of these details would not be known to both parties at T+1. An example of this is the information on principals (i.e. beneficial owners) to a trade on agency loans. This may result in difficulties in reporting by the deadlines proposed and/or corrections after the deadline, which would increase the cost for reporting parties unnecessarily.

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<sup>39</sup> One investment bank said that it would likely take six new individuals (building up over the next two years) to support this in terms of processing feedback from TRs, executing follow-up phone calls and emails, and constructing spreadsheets to understand mismatches. This respondent further noted that the current matching rate for EMIR is only 25 per cent, and there was suggestion that matching rates for SFTR could — initially at least — be even lower.

<sup>40</sup> One reporting party gave the example of fields on rates to demonstrate mismatching issues. They said that one counterparty could book something as a floating rate, with reference to the relevant spread (e.g. LIBOR + 0.2%), while another counterparty may book this as a fixed rate and amend as they go forward (e.g. 3.2%). In total there are 12 fields on floating rates and thus they believed it would be very unlikely that all of these fields would be matched. Similarly, with reference data, currently, there is no agreed upon classification of collateral and, therefore, if you asked 10 banks to provide their classifications you would probably get 8 different answers. Again, with fields for capital margins, although they can be easily derived from other data fields, if you ask 10 different banks you might get 8 different answers. The reasons for this may be that preceding fields may differ and that different standards and/or methods are being used (e.g. to calculate haircuts, or to hand-mark prices on illiquid bonds). As an alternative, it may be best for a single central calculation to take place, or for banks to be provided with a water tight calculation method.

- **Organisational barriers to reporting.** The regulation mandates that Agency Lending Disclosure trades have to be reported at a principal level. However, non-disclosure requirements may limit access to principal level information to a few authorised people within the firm, which may render such reporting more inconvenient and costly.
- **High proportion of single-sided reporting.** In this respect, some investment banks suggested that they would consider repapering existing agreements with non-EU counterparties to ensure that the reporting burden under SFTR for these entities does not fall upon themselves. In addition, a trade repository suggested that there could be some dampening of the volumes in the market in this respect, as there may be a reluctance on the part of some non-EU market participants in the securities lending market to have disclosed their identity as a beneficial owner / lender.

### Quantification of costs

In this section, we provide an estimate of the cost of implementation based on the evidence we have assembled. As many firms were still waiting for the finalised text to make a decision, they were unable to provide detailed cost estimates. Even so our model has assumptions consistent with the views expressed to us.

We consider four broad types of reporting bodies that we have modelled cost for, namely, Tier 1 firms (i.e. large financial firms, e.g. global investment banks, of which we assume there are about 10), Tier 2 firms, other financial institutions (FI) and non-financial firms (NFCs)/small beneficial owners. The latter group are something of an unknown in terms of size, with few – but widely varying – estimates available to us. We have taken 25–30,000 as our estimate. These categories were chosen based on the difference in cost and its drivers identified through our fieldwork.

**One-off costs.** Whilst the IT build-cost is a significant cost driver for most reporting bodies, Tier 1 and 2 firms are more likely to build it in-house while other firms find it more cost efficient to outsource this. This selection is not simply pecuniary — the Tier 1 and Tier 2 firms are highly concerned with the regulatory and reputational risks around regulatory reporting, and so may be willing to incur additional cost to keep such reporting fully in-house. We assume there is no build cost incurred by other FIs and NFCs (although there are still costs around on-boarding such outsourced services, additional in-house connectivity and re-papering.

One-off costs per firm have been estimated on the basis that the build, connectivity and on boarding costs are predominantly reflected through the salaries of IT staff (whether internal or not), while the repapering of agreements are primarily a reflection of compliance staff costs. Applying typical industry salaries for these roles and an overhead cost inflator enables an estimation of the monetary costs associated with the resource requirements in man years.

**Ongoing costs.** The main ongoing cost for Tier 1 and Tier 2 firms is the IT and system maintenance cost. We assume this to be 15 per cent of the build cost. All reporting parties also incur an ongoing staff cost in relation to monitoring and reconciling trades, which would be largely compliance staff. The cost is significantly smaller for other FIs and NFCs who typically outsource this to a third party. Man year resource requirements have been converted into monetary estimates using a similar approach to that described above for one-off costs.

To capture the diversity in firms' IT structures and implementation strategies, as well as the difficulty for respondents to disentangle the costs of the SFTR (Level 1) from ESMA's technical standards (Level 2), we have in some cases presented lower and upper bound estimates of the anticipated resource requirements and/or monetary costs. For example, we estimate the build cost for Tier 1 firms to be between 7 man years (lower bound) and 10 man years (upper bound).

**Table 4.1: Cost estimations for different types of reporting parties**

Cost items	Tier 1	Tier 2	Other FIs	NFC
<b>One-off costs</b>				
Build cost (self-build)	7-10 man years	1.5-3 man years	-	-
Connectivity, repapering and on-boarding (if outsourced)	6-10 man years	1-2.5 man years	€28,000	€4,000
Consultancy	€100,000-€200,000	€50,000-€100,000	-	-
<b>One-off costs per firm</b>	<b>€2.1-€3.1m</b>	<b>€0.3-€0.6m</b>	<b>€28,000</b>	<b>€4,000</b>
<b>Ongoing costs</b>				
IT and system maintenance	15% of build cost	15% of build cost	-	-
Outsourced reporting cost	-	-	€2,500-€3,000	€400-€500
Staff costs (e.g. monitoring & reconciling data)	2-4 man years	0.25-0.3 man years	0.03-0.05 man years	0.01 man years
<b>Ongoing costs per firm</b>	<b>€0.3-€0.6m</b>	<b>€0.05-€0.09m</b>	<b>€6,000-€8,000</b>	<b>~€1,500</b>

Our model estimates that the one-off cost would be approximately €2-€3 million, on average, for a Tier 1 firm. At least some of the participants we engaged with considered a higher figure likely, or at least plausible. Most reporting bodies do not consider the ongoing cost to be very substantial, expecting it to quickly absorbed into existing workflow, and hence, would not increase the ongoing cost substantially.

The total costs for the industry would be €151-198 million on a one-off basis and €44-59 million ongoing. We emphasise that firms were not able to fully distinguish between costs derived from LI and from the Technical Standards, and that therefore these costs cannot be seen as attributable solely to the latter.

The annual turnover of the euro repo sector is about €120 trillion (about €30 trillion per quarter). Making some allowance for sterling repo and other SFT markets (especially securities lending) provides a suitable context for these estimates. This suggests that the incremental increase in transaction costs should be some small fraction of a basis point. Whilst these markets operate on tight returns, it is difficult to reconcile this finding with impacts on the volume of business other than for the more marginal trades / more marginal customers, as we discuss further below.

Given that many stakeholders who responded to the survey were in the early stages of assessing the potential costs of compliance, there is insufficient evidence at this stage on which to provide a reliable quantitative breakdown of the costs for all different types of SFTs. The figures above should therefore be seen to represent an average cost across SFT types constructed with particular reference to repo and securities lending. There are, however, some qualitative observations that can be made about how costs might be experienced differentially across the industry.

First, in contrast to, say repo, stakeholders stressed that in margin and commodities lending activity there is no one-to-one matching of loans and collateral, with loans instead typically secured against a portfolio of securities (i.e. the collateral is pooled). This would likely be reflected in higher one-off build costs and consultancy costs, but primarily in higher ongoing staff reconciliation costs for such activities. If a suitable industry-level protocol is not agreed, the consistency (and hence quality) of the data recorded could be affected.

Second, while repo usually only requires confirmation of the initial transaction, securities lending transactions typically have multiple modifications over the life cycle of the transaction, whereby even three to four

reportable activities could occur on a single day. Again, we would expect this additional workload to manifest itself as incrementally higher ongoing staff costs relative to repo.

### Indirect costs

In addition, to the direct compliance costs discussed above, it is also important to consider whether any indirect costs may arise indirectly as a result of ESMA's technical standards. Indirect costs include any undesirable effects that may arise in the SFT market, or more broadly, due to the regulation.

A key issue in this context is whether regulatory compliance costs may be sufficiently high that they lead to a reduction in volumes traded in the SFT market. This could be caused by existing players trading lower volumes in the market, and/or by some stakeholders, or perhaps certain types of stakeholders, exiting the market altogether. Market exit could occur if stakeholders believe that the additional costs of compliance are enough to make their engagement in SFTs no longer commercially viable. This would in part depend on the magnitude of compliance costs faced by the stakeholder in question (both one-off and ongoing), but also the current profitability of SFTs to their business (i.e. do they already operate to quite tight margins which the compliance costs may, or do they have sufficiently large margins to absorb these compliance costs and still enjoy commercial viability).

On balance, participants do expect some detrimental impact on trading volumes as a result of the regulation, albeit on a fairly minor scale in the most part. The additional cost and risk imposed by the regulation is likely to have some dampening effect on the SFT market, but a few participants implied that some costs would be absorbed elsewhere in the business in recognition of the narrow margins common in SFTs. Indeed, a minority of participants engaged with thought that whilst transaction costs would indeed increase, volumes would not change as a result, as most of these transactions still play a crucial refinancing role that firms are unlikely to forego.

Smaller pensions funds and AIFMs were thought likely to be most affected, perhaps finding the hassle and regulatory risk too high given the volumes they are trying to sustain.

NFCs, who may only conduct three or four trades per year, may also not be able to justify the extra costs and hassle, and thus drop out the market and/or shift volumes elsewhere. SFTs are seen as a fairly low margin business and are thus dependent on higher volumes to ensure commercial viability.

For larger market players, more marginal trades may also disappear. An increase in the minimum threshold for what could be considered a commercially viable transaction would increase, as the minimum basis point gain would now have to be higher in order to cover the increased back office costs associated with the transaction. Given the higher back office costs per transaction, although trading volumes may decline, overall trading values may be less affected, as trades are increasingly lumped together and completed less frequently to avoid the duplication of back office costs. These higher back office costs, and any incremental reduction in trading volume which may result, may also be compounded by increased back office costs associated with several other forthcoming regulatory requirements, such as the Fundamental Review of the Trading Book.

If the high compliance costs cause smaller firms dealing with lower volumes to withdraw from the market altogether, as well as a reduction in trading volumes and frequency, then this could adversely impact market liquidity and efficiency, at least in some niches.<sup>41</sup> Although, SMEs may look to delegate reporting in response, there have been concerns raised about the reliability of the delegated reporting model.

Various market participants thought that trading volumes would shift elsewhere, including to the US and other jurisdictions, especially in cases where the majority of a given participant's transactions already take place in these other jurisdictions. There was a perception among some stakeholders that the regulatory approach to reporting on SFTs being adopted in the US is simpler and thus likely to impose comparatively lower compliance costs, such that it may provide an incentive to shift some volumes from the EU to the USA.

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<sup>41</sup> ESMA Consultation Paper, Figure 2.

This effect may be exacerbated by the risk of refusal of US and/or Canadian collateral in order to comply with the requirement to report on settlement date. This is because in order to consolidate and enrich all the data in time, reporting parties may need to impose an internal cut-off of 6pm which could lead certain collateral takers to reconsider taking US and/or Canadian collateral. This may in turn raise two further concerns: firstly, that the reporting party would be more exposed to exchange rate risks; and, secondly, that by ruling out these more liquid assets, there may be a significant impact on the risks and returns for clients.

Impacts on market volumes may also be induced by changes in fee structures. Typically the data fee is invisible and not a separate add-on, with the fee per transaction (in basis points) linked to the terms of the transaction. The majority of stakeholders did not consider the possibility of changes in fee structure, although one trading venue did suggest that the regulation could lead to the introduction of minimum fees. The current model of allowing resubmissions under the same UTI at no additional cost may have to change, with a switch instead to a per message based transaction fee.

In addition to the above, there were also wider concerns raised by market participants which relate more directly to requirements specified in the Level I text. These are impacts that are not attributable to ESMA's technical standards, but we identify them here partly for completeness and partly because they are relevant to the context in which the Technical Standards will operate. The main concern raised in this respect is that, in order to track collateral, feedback would be required from the relevant counterparty, but that in practice this is unlikely to happen. One trading venue suggested that a solution may be to have a type of 'reuse warning' flagged to the counterparty before they complete the transaction, such that they know in advance whether they are constrained regarding reuse. However, such an approach could lead to a bifurcated market with two different price points, as reusable collateral would be considered much more valuable than non-reusable collateral.

## 4.2 The application for registration, or for the extension of registration, of Trade Repositories

### 4.2.1 What does the SFTR say?

#### What does the SFTR already specify?

Article 5(1) SFTR requires TRs to submit an application for registration or extension to ESMA for the purposes of TRs fulfilling their report obligations set out under Article 4 SFTR. Article 5(2) stipulates eligibility conditions for TR registration: it must be a legal person established in the EU; it must use procedures to verify completeness and correctness of details reported to it under Article 4(1); and it must meet the requirements of Article 78, 79 and 80 of EMIR (more details later). An additional eligibility requirement for registration, as set out by Article 11 SFTR, is that the TRs must also pay the fees necessary to compensate the costs incurred by ESMA in the registration, recognition and supervision of TRs and by any competent authorities to whom tasks are delegated.

Following submission, ESMA will have 20 working days to assess the application's completeness. If deemed incomplete, ESMA is to specify a deadline for further information submissions by the TR, and ESMA will then notify the TR once the application is judged to be complete. After this, ESMA has a further 40 working days to accept or reject the application based on the TR's compliance with Chapter III of the SFTR.

#### What does the SFTR delegate to ESMA?

The regulation requires ESMA to develop both regulatory and implementing technical standards (RTS and ITS), as follows:

- Article 5(7) SFTR asks ESMA to develop *RTS* which provide details on the application for registration (Article 5(5)(a)) and a simplified application for an extension of registration (Article 5(5)(b)) in order to avoid duplication of requirements.
- Article 5(8) SFTR asks ESMA to develop *ITS* which detail the format of the application for registration and the application for an extension of registration, with the latter in a simplified format to avoid duplication of procedures.

#### 4.2.2 What do the ESMA draft Technical Standards say?

There are three different channels to ESMA's proposal regarding RTS in accordance with Article 5(7) of the SFTR:

- Use of existing provisions in RTS 150/2013, which were the RTS developed by ESMA pursuant to EMIR.<sup>42</sup>
- Specific amendments to certain provisions set out in RTS 150/2013.
- New provisions specific to SFTR regarding procedures to verify completeness and correctness.

We discuss each in more detail below, followed by a discussion of how these provisions apply in the case of an extension of registration and, finally, the ITS concerning the format of the application.

In parallel to these developments on RTS related to the SFTR, ESMA is also proposing amendments to RTS 150/2013 (pursuant to EMIR) to bring them in line with the prospective RTS for SFTR, in order to ensure that the registration requirements are consistent as possible and, therefore, create a level playing field across the entities that may choose to apply under only one of the regimes.

##### Use of existing provisions in RTS 150/2013, which are the RTS set out by ESMA with regard to EMIR

Articles 78, 79 and 80 of EMIR and RTS 150/2013 set out the requirements for registration of TRs under EMIR. In interpreting RTS 150/2013 in the context of SFTR, the SFTR says that all references to EMIR should be instead read as SFTR and that any references to 'derivative contracts' should be read as 'SFTs'. The table below provides the full set of articles specified in RTS 150/2013.

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<sup>42</sup> Commission delegated regulation (EU) No. 150/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and TRs with regard to regulatory technical standards specifying the details of application for registration as a TR.



**Table 4.2: Articles of RTS 150/2013 — to be adopted for ESMA's RTS in relation to SFTR**

<b>1</b> Identification, legal status and class of derivatives	<b>13</b> Management of conflicts of interest
<b>2</b> Policies and procedures	<b>14</b> Confidentiality
<b>3</b> Ownership of the trade repository	<b>15</b> Inventory and mitigation of conflicts of interest
<b>4</b> Ownership chart	<b>16</b> IT resources and outsourcing
<b>5</b> Organisational chart	<b>17</b> Ancillary services
<b>6</b> Corporate governance	<b>18</b> Transparency about access rules
<b>7</b> Internal control	<b>19</b> Transparency about compliance arrangements and accuracy of data*
<b>8</b> Regulatory compliance	<b>20</b> Pricing policy transparency
<b>9</b> Senior management and board members	<b>21</b> Operational risk
<b>10</b> Staffing policies and procedures	<b>22</b> Recordkeeping policy
<b>11</b> Fitness and properness of staff	<b>23</b> Data availability mechanisms
<b>12</b> Financial reports and business plans	<b>24</b> Verification of accuracy/completeness of application

\* Provisions in Article 19 of RTS 150/2013 are already covered in the SFTR itself (Article 5(2)), and thus not part of ESMA's technical standards.

### Specific amendments to certain provisions set out in RTS 150/2013

ESMA is proposing to use its experience of the registration and supervision of TRs under EMIR to refine the registration framework for SFTR. In particular, ESMA have suggested the following amendments:

- In relation to [Article 2](#) of RTS 150/2013, it should be ensured that policies are approved by the Board, the policies are approved by the senior management and internally circulated to staff employed by, or dedicated to, the TR (with documented acknowledgement by the staff on their awareness of the policies and procedures).
- In relation to [Article 7](#), ESMA specify:
  - A detailed overview, rather than simply an overview, of the TR's internal control system.
  - Submission of any manuals concerning the implementation of internal policies and procedures.
  - A more detailed description of the internal audit function (methodologies, standards and procedures) and the Internal Audit Committee (composition, competences and responsibilities).
  - A more detailed description of what is to be included in the three-year work plan.
- In relation to [Article 12](#), a more detailed business plan documenting, in particular, expected reporting activity expressed as volume of transactions (including  $\pm 20$  per cent variations from the baseline) and the relevant fixed and variable costs incurred in providing a repository function under SFTR.
- In relation to [Article 16](#), ESMA require additional detail on outsourcing services that a TR may be reliant on, including: details on the services being provided (the scope, granularity, timelines and other relevant conditions); the roles and responsibilities under these service agreements; and targets for the activities outsourced, as well as details of the actions to be taken if these targets are not met.
- In relation to [Article 17](#), more information is required on the operational separation of the repository activities under SFTR, i.e. that there are people, procedures and systems in place to support the services provided by the TR under the SFTR. The TR is to provide information to describe the existence of operational separation between the repository activities under SFTR and those under other reporting regimes, such as EMIR.
- In relation to [Article 18](#), ESMA consider that TRs should; allow the reporting counterparties, which are not participants to the TR, to request separate accounts if they consider this necessary given their

reporting volumes; provide details on the channels used to provide information on access to the TR by reporting parties; and separate out the categories of access available to different types of users, including TR internal users, reporting participants, non-reporting participants and regulators.

- In relation to [Article 21](#), as well as a description of the resources available to identify and mitigate operational risks and any other material risks, TRs should provide copies of relevant policies or methodologies to this end. They also propose to set out additional requirements as part of the business continuity plan, namely plans, procedures and arrangements for: emergencies handling and personnel safety; managing crises, coordinating business continuity efforts and determining timely and effective activation, mobilisation and escalation capabilities; and recovering the TR system, application and infrastructure components.
- In relation to [Article 22](#), ESMA are proposing a slight rewording, such that rather than providing a general description of recordkeeping policies and procedures, TRs will be required to provide documents of the actual policies and procedures themselves.
- In relation to [Article 23](#), ESMA require TRs to provide details on the procedure used for the calculation of aggregate positions and on the procedures to ensure integrity of the data reported to authorities.

### New provisions specific to SFTR

In addition to the above amendments to the RTS for EMIR, the SFTR has also imposed some new requirements regarding the procedures that TRs must have in place to ensure the completeness and correctness of SFTs reported to them. The procedures that TRs must have in place are set out by Article 5(2) SFTR, and ESMA's RTS stipulate that TRs would need to provide information on these procedures as part of their application for registration, which are:

- [Authentication](#) — a procedure to authenticate the reporting party and its users.
- [Schema validation](#) — a procedure to ensure that the information received from reporting parties are in the relevant schema (which is likely to be the xml template based on ISO 20022).
- [Authorisation/permission](#) — a procedure to ensure a reporting party has the permission to report SFTs on behalf of other parties to the TR. This includes information on actions that must be taken by the TR both prior to and during reporting.
- [Logical validation](#) — a procedure to ensure that there are no intended modifications to an SFT which has not been reported or has been cancelled.
- [Content validation](#) — a procedure to ensure submissions are compliant with relevant business rules.
- [Reconciliation of data](#) — a procedure to ensure reconcilability of SFTs reported to different TRs
- [Feedback to participants](#) — a procedure to ensure timely response of TRs to reporting party as to whether their submissions have been accepted and reconciled, as well as standard end-of-day SFT reports to reporting parties.

In addition to the new provisions relating to ensuring completeness and correctness of SFTs, there are other new provisions incorporated into the RTS on SFTR, namely:

- TRs need to identify the relevant competent authority of a member state, where they are already registered or authorised by that competent authority.
- TRs should employ at least one person with education and experience in IT to assume responsibility on IT matters. In addition, there should be sufficient level of knowledge and experience on IT issues on the board, and a proportion of the senior management should have academic degrees, deep knowledge and experience on IT management and SDLC.
- TRs should provide a detailed description of the system supporting SFTR reporting, including: business requirements; functional specialties; technical specifications; system architectural and detailed design; data model and data flows; and operations and administration procedures and manuals
- TRs should include explicit compliance with the terms and conditions defined in the RTS under Article 12(3)(d).



- TRs should have a procedure to allow for the timely, structured and comprehensive aggregation and comparison of data across TRs by the relevant authorities.
- TRs should provide voluntary portability between TRs in the case of withdrawal of registration.
- TRs should include proof of payment of relevant registration fees.
- TRs should provide the relevant policies, procedures, mechanisms and controls in place to protect TR data from cyber-attacks.

#### Simplified requirements of application for extension of registration under SFTR

The requirements for extension of registration are a subset of those required for registration itself (set out under the three subheadings above), as the application for extension of registration is designed to be a slimmed down version that avoids significant duplication of requirements for TRs. Providing there has been no changes to the information submitted during registration under RTS 15/2013 or during subsequent supervision, ESMA provides that the requirements set out in the table below can be omitted from applications for extension of registration. The process and timelines for extension of registration are however the same as that for new registration.

**Table 4.3: RTS omissions in the case of extension of registration**

<b>Article of RTS 15/2013 pursuant to EMIR</b>	<b>Details to be omitted</b>
<b>1(2)(j)</b>	Providing information on pending administrative, arbitration, judicial or litigation proceedings, and non-pending proceedings which may impose material costs.
<b>3</b>	Information regarding ownership of the TR.
<b>4</b>	An ownership chart for the TR, including parent undertakings, subsidiaries etc.
<b>6</b>	Information on corporate governance policies for senior management and board.
<b>7(2)(d)</b>	Information on internal bodies responsible for evaluating internal control mechanisms.
<b>8(a), (c)</b>	Information on: roles of persons involved in regulatory compliance; independence of the compliance function; and the most recent internal regulatory compliance report.
<b>9(a), (b), (c)</b>	Information on each member of senior management and board: their CV; details of any criminal convictions in the field of finance; and a self-declaration of good repute.
<b>10</b>	Information on the staff remuneration policy (senior management, board and risk/control functions) and policies to risk over-reliance on individual employees.
<b>12(1)(a-c), (2)(b-c), (3), (4)</b>	Financial statements and corresponding audit reports (including for any parent undertaking) or, if not available, an interim financial report and statement of financial position. Details of any plans to establish subsidiaries.
<b>14</b>	Details of internal measures to prevent unwarranted use of information, including restrictions on staff and a log of who is accessing what information.
<b>16(b)</b>	Information on IT investment and renewal policies.
<b>21(d)</b>	Information on how TR activities are maintained in case of disruption.
<b>22(1)</b>	Information on data registration and storage procedures.

In terms of the RTS for SFTR, this means that applications for extension of registration must include, as a minimum, the requirements of Articles; 1 (except 1(2)(k)); 2; 5; 7 (except 7(2); 8(b); 9(1); 9(d); 11; 12(2); 13; 14(2); 15; 16 (except 16(c)); 17; 18; 19; 20; 21; 22; 23; 24; 25; and 27.

### ITS on the format of application for registration and extension of registration

The format for EMIR is set out under ITS 1248/2012, and included the following requirements:

- Applications should be provided in a durable medium, enabling storage for future use and reproduction.
- Each document submitted as part of the application should be given a unique reference number.
- For each requirement set out in ESMA's RTS, the application should specify in which document the relevant information is provided, including the document title, its unique reference number and the precise chapter/section/page reference (or, if the information is not provided, the reason why).

ESMA intends to use the same ITS for STFR as those for EMIR set out above.

### 4.2.3 Expected impacts

Figure 4.2 below maps out the mechanisms by which costs and benefits may arise in respect of both the RTS and ITS regarding the application for registration, or for the extension of registration.

**Figure 4.2: Mechanisms of effect for RTS and ITS on applications for registration and extension of registration**

Goals	Topic	Affected stakeholders	Costs	Benefits
Ensure compliance of the TRs with SFTR and, thereby, to enhance the transparency of the securities financing markets	Adoption of existing provisions in RTS 150/2013	Trade repositories	Staff resourcing costs in various departments (compliance, legal, HR, IT, senior management and board), in order to assimilate relevant information and draft documents.	
			Production of certain documents for submission to competent authorities, may improve internal governance, control, oversight functions.	
	Amendments to existing provisions in RTS 150/2013	Reporting parties	Costs of meeting reporting requirements passed on by TRs to reporting parties.	
	Omission of certain provisions in the case of extension of registration		Greater transparency on operation of TRs and use of SFT data. Reporting parties aware that registered TRs have met certain requirements, which may improve trust in the TRs.	
Verify the completeness and correctness of SFTs reported to TRs.	New reporting provisions on TR procedures mandated under SFTR	ESMA	Staff and IT resource costs of processing and storing information received by TRs.	
			Improved transparency and accountability within TRs, as easier to identify, e.g. who is responsible for certain functions and potential conflicts of interest. Reduce the need for ad-hoc information/data requests, and thus may allow more efficient investigation processes.	

#### Benefits

*Use of existing provisions in RTS 150/2013, which are the RTS set out by ESMA with regard to EMIR*

The detailed reporting requirements set out in the RTS on the application for registration, or for the extension of registration, should help to improve the transparency of operation of TRs for ESMA and the competent authorities and, by doing so, improve accountability and reduce the risk of data manipulation. It

should be easier, for example, for ESMA to know who is responsible for certain functions within the TR and thus allow them to engage with the correct individual(s) more quickly and directly should a specific issue arise.

Reporting parties should benefit from greater transparency regarding the operation of TRs and the use of the SFT data reported to them, which should also help to promote greater trust in the TRs.

The RTS may also benefit the TRs themselves, by improving the documentation of procedures and processes within the organisation and, as a result, improving internal governance, control and oversight functions (albeit by imposing additional staff resource costs on TRs, as discussed in the 'costs' section below). In addition, the use of existing provisions from RTS 150/2013 should be beneficial to TRs insofar as they are already familiar with these requirements and, as such, can leverage some of the costs previously incurred in complying with the provisions of RTS 150/2013 when adhering to this latest set of provisions.

#### *Specific amendments to certain provisions set out in RTS 150/2013*

The main benefit of the amendments should be in providing further, typically more detailed, information to ESMA (that were omitted from RTS 150/2013), in order to make ESMA better placed to review and assess the TRs and, ultimately, improve their regulatory oversight. The requirement to submit a more detailed business plan should, for example, enable ESMA to better assess TRs' commercial viability (e.g. in possessing sufficient working capital). As another example, the requirement to demonstrate appropriate segregation of data received under different regimes should help ESMA to assess the extent of operational separation between the different reporting activities of the TRs. As well as improving regulatory oversight, the requirement for TRs to report on the different internal control mechanisms may help ESMA to leverage existing controls in place at the TR level, in order to underpin a more efficient supervisory structure.

In terms of benefits to reporting parties, the RTS requiring TRs to provide a description of the channels used to disclose the information regarding the access by reporting parties to the TR should increase transparency of access to TRs and, in turn, help facilitate on-boarding of potential clients.

#### *New provisions specific to SFTR*

The new provisions specific to SFTR should help ESMA to assess the compliance of a TR with the requirements set out under SFTR, such as the TRs having in place appropriate procedures to ensure the completeness and correctness of SFTs reported to them. In addition, the requirement for TRs to employ at least one person with education and experience in IT, as well as sufficient experience at the board and senior manager levels, should help guarantee a minimum level of IT expertise at TRs for carrying out relevant functions. That said, the extent to which this requirement is actually binding on a TR's current staffing structures may be limited, and thus the potential for any *incremental* benefit small.

The RTS should also be beneficial from an efficiency perspective, by requiring TRs to provide voluntary portability between TRs in the case of withdrawal of registration. This should assist reporting parties in transferring data across TRs, by eliminating duplicate steps for the reporting party and thus improve reporting efficiencies. TRs are also required to have a procedure for the timely, structured and comprehensive aggregation and comparison of data across TRs by the relevant authorities, which should again help to improve the efficiency and effectiveness of regulatory oversight.

#### *Requirements for extension of registration under SFTR*

The expected benefit of offering extension of registration, as an alternative to the application for registration, is that it prevents unnecessary duplication of time, effort and costs for those TRs who are already registered under EMIR. However, as discussed in the 'costs' section below, the stakeholder evidence of any material benefit here is mixed.

### *ITS on the format of application for registration and extension of registration*

The key benefit of using the same ITS on format as for EMIR is that those TRs who have already registered under EMIR will be using a pre-existing format that they are already familiar with, which should therefore help to reduce compliance costs.

### *Compliance costs*

#### *Use of existing provisions in RTS 150/2013, which are the RTS set out by ESMA with regard to EMIR*

Table 4.2 above sets out the various reporting requirements that must be met as part of a TR's application for registration. Given the wide range of information that must be reported to ESMA, the registration process is likely to draw on a variety of different staffing resources, including compliance, finance, legal, IT, and HR, as well as members of senior management and the board.

This staff time would be required to assimilate relevant information and, where necessary, draft new documentation which must be included in the application. TRs may need one, or more, dedicated compliance personnel to oversee the whole process and bring the application together. The extent to which incremental costs are incurred by each TR would depend on the extent to which these parties are already collecting and recording the relevant information. At one extreme, it may simply require the bringing together of pre-existing documentation into one package for submission to the competent authority, while, at the other extreme, it could involve drafting documents from scratch and establishing new databases to collect certain required information.

TRs who have already been through the registration process for EMIR may be better placed to understand and meet the requirements, having already been required to meet similar RTS as part of EMIR. Therefore, TRs who are registered under EMIR may be envisaging lower incremental costs for the SFTR registration than for their previous EMIR registration (even aside from the fact that the *extension* of registration by design imposes fewer requirements than the application for registration).

Reporting parties may be affected insofar as the additional costs incurred by the TRs as a result of the registration process, or extension of registration process, are passed onto the parties reporting to them. This would be of particular concern if certain aspects of the registration requirements were not seen to materially benefit ESMA's supervisory role in any way, such that the requirements impose additional costs on ESMA and, in turn, the TRs and their users, without any material benefits to compensate.

#### *Specific amendments to certain provisions set out in RTS 150/2013*

The amendments to certain provisions in RTS 150/2013 are, in the most part, requiring greater detail in the registration relative to that required by the RTS for EMIR. These more detailed registration requirements should impose additional staff costs on the TRs. Additional staff time would, for example, be required to draft more detailed documentation and to communicate with different departments/colleagues, in order to collect the relevant information to be included in this additional documentation. A specific concern raised in response to ESMA's discussion paper is that the requirement to provide a detailed business plan, including the expected level of reporting activity, may present some difficulties, e.g. in estimating the level of reporting activity whenever a new regulation or novel reporting service is implemented.

#### *New provisions specific to the SFTR*

In terms of the new provisions regarding procedures to verify the completeness and correctness of the data, relevant procedures look to be largely in place already and, therefore, the incremental costs should be fairly limited (primarily the incremental cost in staff time required to document these procedures for inclusion in the application for registration).

The requirements for mandatory employment of at least one person with education and experience in IT, as well as sufficient IT skill and experience at the senior management and board levels, may impose additional

costs on a TR, if they do not currently have sufficient in-house expertise at the senior executive level. However, as noted earlier, this looks unlikely to affect in a binding way all TRs. Another potential concern raised in the consultation responses is that submitting detailed information on the mechanisms and controls in place to prevent cyber-attacks may be counterproductive by increasing the risk of exposing confidential information of the TRs.

#### *Requirements for extension of registration under SFTR*

Our stakeholder engagement indicated that some TRs already registered under EMIR would enter the SFT market — but also that some of these TRs might not offer SFT-related services (i.e. the latter TRs would choose not to offer a one-stop shop service for regulatory reporting duties that require counterparties to report to TRs). In reality, these TRs may still opt to invest in being an SFT TR — but one inference is that a TR entering the market only to provide an SFT service is less likely. Therefore, it is expected that only the requirements for extension of registration will have to be met (and not the full application for registration requirements).

In theory, the costs of the RTS for extension of registration should represent a subset of the costs of the RTS for registration itself, as the former contains only a subset of the total requirements for a new application for registration. However, evidence from stakeholders on the materiality of completing the extension of registration was quite mixed. On the one hand, some respondents suggested that the procedure for extension of registration is still lengthy and resource intensive and is, ultimately, unlikely to represent any material cost savings relative to applying from scratch. One of these respondents attributed this to the operational separation between the different reporting areas, which means that it is not a simple read across from EMIR but requires a separate thought process. While it should be recognised that operational separation is not a specification of ESMA's technical standards, it is nevertheless a factor which could cause the Level 2 costs to increase (i.e. it is relevant to the counterfactual). In order to address this concern, ESMA has specified that the TRs should demonstrate an adequate level of operational separation of resources, systems and procedures. ESMA included a reference that where common systems or resources might not introduce operational risks, there could be no need to duplicate resources. In those other cases such as validation, reconciliation or recordkeeping of data, where the different structure of the processes and applications would require separation, such separation should be effectively established by the TR. However, others saw the extension of registration as a relatively straightforward process, amounting to in the order of a few weeks work, and acknowledging that this may not have been the case had it been an application from scratch. On balance, it seems that, although the more limited requirements of the extension of registration may act to ease registration costs to at least some extent, the extension of registration still represents a material cost to TRs (which may in turn need to be recovered from the industry).

#### *ITS on the format of application for registration and extension of registration*

Compliance with the ITS is likely to require a small amount of additional time from compliance staff to assimilate all the documentation, provide unique reference numbers and set out where in each document the relevant information is provided.

#### *Cost estimate*

TRs' estimates of the time required to process authorisation (or rather extension of registration) ranged from weeks to months by a small dedicated team. If we assume that this work is largely undertaken by compliance and legal staff, this suggests that the total direct compliance costs across six TRs would be €250,000–€330,000. This estimate is on the basis that there is no staff separation between different areas, specifically EMIR and SFTR. While we estimate extension of registration to be in the order of €50,000 per firm, we anticipate that any new registrations would be more costly — in the order of €65,000–€100,000 per firm.

As earlier explained for reporting parties, we again emphasise the inherent difficulty for relevant stakeholders (in this case TRs) to fully distinguish between costs derived from LI and from the Technical Standards, and as such that these cost estimates cannot be seen as attributable solely to the latter.

#### Indirect costs

A concern raised by TRs regarding the registration process is that the requirement for operational separation at TRs could lead to some duplication of costs. Again, while operational separation itself is not a requirement of ESMA's technical standards, it is nevertheless an existing part of the regulatory environment which would make the L2 costs more material in practice. This is because the resources dedicated to EMIR have to be operationally separate from those for SFTR, thus limiting the potential for efficient resource sharing across different reporting areas. This may limit the potential for TRs to benefit from economies of scale and could lead to cost duplications being passed onto market participants as higher prices (which may serve to compound any volume effect described in Section 4.1.3 above). That being said, given the limited magnitude of the compliance costs estimated above, even if these costs were fully passed onto market participants it does not seem plausible to expect any incremental impact on market volumes as a result. As explained above, the actual concerns have been further mitigated by making clearer the actual requirements on operational separation and by limiting them to the requirements for operational separation to those areas where further risks might be introduced.

### 4.3 The procedures to be adopted by Trade Repositories to verify the completeness and correctness of what is reported to them

#### 4.3.1 What does the SFTR say?

Articles 5(7) and 12 set out the requirements on TRs with respect to verifying the completeness and correctness of data reported to them under the SFTR. In particular, Article 12(3) of the SFTR specifies that ESMA shall develop RTS which specify: the frequency and details of aggregate positions and SFTs; the operational standards for the collection, aggregation and comparison of data across TRs; and the details of the information to which, and the terms and conditions under which, other relevant entities (as defined in the SFTR) can have access. The relevant parts of the SFTR are provide below.

#### *Article 5*

7. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of all of the following:

- (a) the procedures referred to in paragraph 2 of this Article and which are to be applied by trade repositories in order to verify the completeness and correctness of the details reported to them under Article 4(1); [...]



## *Article 12*

### **Transparency and availability of data held in a trade repository**

1. A trade repository shall regularly, and in an easily accessible way, publish aggregate positions by type of SFTs reported to it.
2. A trade repository shall collect and maintain the details of SFTs and shall ensure that the following entities have direct and immediate access to these details to enable them to fulfil their respective responsibilities and mandates: [...]
3. In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and taking into account the needs of the entities referred to in paragraph 2, develop draft regulatory technical standards specifying:
  - (a) the frequency and the details of the aggregate positions referred to in paragraph 1 and the details of SFTs referred to in paragraph 2;
  - (b) the operational standards required, to allow the timely, structured and comprehensive:
    - (i) collection of data by trade repositories;
    - (ii) aggregation and comparison of data across repositories;
  - (c) the details of the information to which the entities referred to in paragraph 2 are to have access, taking into account their mandate and their specific needs;
  - (d) the terms and conditions under which the entities referred to in paragraph 2 are to have direct and immediate access to data held in trade repositories.

Those draft regulatory technical standards shall ensure that the information published under paragraph 1 does not enable the identification of a party to any SFT.

### **4.3.2 What do the ESMA draft Technical Standards say?**

#### **Operational standards for data collection**

**Validation** is to have the following steps: **authentication of participants**; **schema validation** (submissions should be in XML format, which would then be validated against and compliant with XML Schema Definition — XSD); checking on behalf of which entity the submitting entities have **authorization / permission** to provide data; **logical validation** checking whether the report submitting entity is not intending to modify SFT which has not been reported or which has been cancelled; and **business rules or content validation** based on the values included in the ITS on reporting and the additional validation rules (which should be made available to the TRs prior to the commencement of reporting under SFTR).

Errors in schema validation, authorization / permission and logical validation should prompt a specific feedback response to the report-submitting entity describing the error. The requirement to send feedback messages would be removed in the case of authorization / permission validation where one of the counterparties to the trade is exempted from reporting its SFT and the SFT should be reported either by the financial counterparty of the management company of the UCITS or AIF.

The lack of compliance with business rules or content validations should give rise to automatic rejection.

## Reconciliation of data

The reconciliation of data should:

- take place the earliest possible after the deadline for reporting by counterparties (after T+1);
- include all the SFTs submitted during the previous day or which, even if submitted before, have not been reconciled (excluding the SFTs that have expired or have been terminated more than a month before the date on which the reconciliation process takes place);
- follow the same daily time schedule across all the TRs and should be concluded the earliest possible time;
- involve a comparison of the economic terms / fields;
- before the end of the day in which the reconciliation takes place, involve the TRs notifying the relevant parties to the SFT regarding any conflicting values reported by them in accordance with the proposals under “Common feedback to participants” described below; and
- flag cancelled trades, i.e. those where the counterparties have initially submitted the SFT by mistake.

The process of reconciliation should include two stages:

- In the first stage – the intra-TR reconciliation – the TRs intend to find in their own databases whether both sides of each trade are reported to it and, if so, notifies the counterparties about the reconciliation status of their trade.
- If no other side of trade has been found, the TRs should move to the second stage — the inter-TR reconciliation, which is a two-step process:
  - Pairing – seeking the peer that has the other side of the trade.
  - Matching – exchanging economic terms of the trade. This is to be repeated until reconciliation is achieved.

The inter-TR stage should be terminated by 18.00 UTC on each day.

The reconciliation of loan and collateral data would be done in two separate processes. The SFT specific collateral would have to be reported by both counterparties at the same level (either transaction level or position level).

TRs should reconcile only the latest state of a given SFT (both loan data and collateral data).

ESMA noted that it might not be efficient to require full reconciliation of all fields. As argued in the Discussion Paper, there are trade-offs between quality of data and the degree of tolerance (the lower the degree of tolerance the higher the quality of data), and between the degree of tolerance and the completion of the reconciliation process (the higher the tolerance the more transactions will be reconciled).

ESMA proposes a closed list of fields that would be subject to reconciliation and flagged the fields that would allow for applying one of three types of tolerances. These tolerances could be applied to:

- Timestamp fields (where several minutes’ requirement would be applied).
- Numerical value fields (one basis point from the midpoint would be applied).
- Percentage values (matching up to the third digit after the decimal would be applied).

## Feedback to participants

**Rejection feedback** – at the latest, an hour after submission, TRs should notify the data submitting entity if the submission is accepted or rejected, and in the case of the latter specify the type of failure (schema, permission, logical or business) and the relevant field or fields affected. The feedback should be compliant with ISO 20022. It is not necessary to provide feedback in the case of problems with the authentication of the users, given



that this violation might not be uniquely attributable to SFTR reporting and it will be difficult to relate this information with specific SFTs.

TRs would be able to reject individual SFTs and the report submitting entity would have to correct the relevant data as soon as possible.

**Reconciliation feedback** – TRs should provide to the reporting counterparties (or other authorised counterparties) feedback messages as to whether the SFT is reconciled or not. If the SFT is not reconciled, then TRs should detail the relevant data elements where reconciliation breaks take place and provide both values reported.

Furthermore, the TR should assign the following reconciliation values for each UTI report:

- Reporting type (Single-sided/dual-sided).
- Reporting requirement for both counterparties (Yes/no).
- Pairing status (Paired/unpaired).
- Loan reconciliation status (Reconciled/not reconciled).
- Collateral reconciliation status (Reconciled/not reconciled).
- Further modifications (Yes/no).

The “Error codes” would be discussed with ISO as part of the definition of the XSD.

**End of day feedback** – for all the accepted transactions, by the end of the day in which the reconciliation process takes place, the TRs should notify the reporting counterparties (or the entities acting on their behalf) whether the transaction is reconciled. If it is not, the TRs should detail the relevant data elements where reconciliation breaks take place and provide both values reported.

The minimum set of feedback reports to the submitting entities and reporting counterparties (end-of-day) is to be:

- Daily activity report – all submissions made during the day either by the participant or an entity to which it has delegated its SFT reporting.
- Trade state report – the most update state of each outstanding SFT (only for open trades).
- Missing collateral report – information on all the SFTs where specific collateral information has not yet been provided.
- Rejection report – all submissions which have been rejected.
- Reconciliation status report – the reconciliation status of all the trades reported so far, which are subject to reconciliation.

These reports can be made available to report submitting entities through the TR interface (rather than sent directly). An automated process should be set up for daily reporting.

### Public data

As suggested in the Discussion Paper, ESMA advises that TRs be required to publish data that should be more granular than the current EMIR requirements but less granular than the proposals in the FSB report. In such case, the aggregation should account for the following characteristics of the SFTs:

- the location of the counterparties (EU vs non-EU);
- the type of SFT (repo, security lending etc.);
- the status of the SFT at the TR (reconciled or not);
- the type of venue of execution;
- whether the SFT is cleared or not; and
- the way the collateral is transferred (tri-party, bilateral etc.).

The published data would show on a weekly basis aggregations of: (i) the principal of repurchase agreements or buy/sell-backs, the aggregate quantity of securities or commodities lent or borrowed and the amount of margin loans; (ii) the number of SFTs; and (iii) the market value of collateral for the SFTs reported in the week and those that are outstanding as of the last Friday.

The technical aspects of publication are intended to be, if possible, aligned with those of EMIR, in particular:

- cut-off time at Friday 23:59:59;
- provision of data by Tuesday;
- use of ECB published exchange rates for rates conversion;
- easily downloadable format, such as csv; and
- maintenance of public record of the last 52 weeks.

#### Data made available to authorities

The TRs have to provide the authorities at least all the data elements that they have received regarding the SFTs concluded by the counterparties. In addition, TRs would be expected to provide the following information, as granular as possible, at SFT level:

- Information on whether the SFT report has been rejected or not. This information can be generated only in cases where the counterparties have used a consistent UTI identification for their submissions and the TRs are thus able to track the relevant submissions.
- The result of the reconciliation process using the categories specified in the XSD.
- Information on the TR which holds the other side of the SFT.

The information will be submitted in transaction-level reports, position-level reports and standardised aggregated SFT reports.

**Transaction-level reports** would be submitted in the same exact format and based on very similar XML schema definition (XSD). The compliance with this requirement is included as part of the requirements for registration under SFTR. The following should be provided to the authorities:

- All SFT submissions made by the counterparties on the previous working day.
- The latest trade state of the outstanding trades as of the close of the previous working day.
- All SFT submissions made by the counterparties in accordance with certain criteria made as of the day of the request by the authority.
- Daily report detailing all the rejected SFTs and the reasons for rejection.
- Daily report detailing the reconciliation status of all the accepted SFTs and the reasons for lack of reconciliation.

**Position-level reports** would be required for all matched transactions at frequency and timing yet to be determined. All the position reports are provided in an XML files based on an ISO 20022 standard. The reports should include:

- reconciliation status of the SFTs;
- gross and net exposure between the counterparties, based on the relevant principal amounts;
- jurisdiction of the reporting counterparty;
- jurisdiction of the other counterparty;
- sector of the counterparty;
- type of SFT (repo, securities lending, etc.);
- indication of cleared or not;
- type of asset class of the collateral (cash, equities, corporate bonds, government bonds, etc.);
- currency of the cash leg;
- maturity bucket;
- haircuts applied; and

- TR that holds the other side.

The data would be made available to the authorities by midday (which is in line with the EMIR deadline).

National/regional authorities are required to submit to the FSB anonymised aggregate data on a monthly basis. In order for them to be able to do that, TRs would be required to submit that data to the authorities in **standardised aggregated SFT reports** with the same frequency as established in the FSB November report.

With regards to the position-level reports, ESMA is considering to what extent they should include reconciled and non-reconciled data in the same report or reconciled and non-reconciled data in two separate position reports. The aggregation of reconciled and non-reconciled data would require defined rules to remedy the discrepancies in the data due to which the data was not reconciled.

#### **Operational standards to aggregate and compare data across repositories**

ESMA stipulates the use of ISO 20022 for all reporting under SFTR (from counterparty to TR and from TR to authorities). When reporting to authorities, the TRs must avoid, as far as possible, any double counting either internal or external (this could arise due to the fact that both trade parties are obliged to report to TRs, as indicated by Level I text of SFTR).

### 4.3.3 Expected impacts

Figure 4.3 below maps out the mechanisms by which costs and benefits may arise in respect of the RTS regarding the procedures to be adopted by TRs to verify the completeness and correctness of what is reported to them.

**Figure 4.3: Mechanisms of effect related to transparency and availability of data**

Goals	Topic	Affected stakeholders	Costs	Benefits
Ensure the quality of reporting under SFTR and, thereby, to enhance the transparency of the securities financing markets	Operational standards for data collection	Trade repositories	One-off IT investment costs in software and/or hardware capable of meeting the data validation, reconciliation and feedback requirements (e.g. in adopting the ISO 20022 standard).	IT costs of developing and maintaining relevant databases, e.g. in providing the reconciliation status of each SFT. Costs of IT software for calculating positions and generating transaction and position level reports.
	Public data		A common standard up the 'reporting chain' from reporting party to relevant authorities, means that TRs do not have to adjust the format of the information they receive.	
Promote data transparency and enable better monitoring of financial stability and systemic risks arising in relation to SFTs	Data made available to authorities	Reporting parties	The removal of expired or terminated transactions after one month from the reconciliation process date should reduce the burden of the reconciliation process on TRs.	A common reporting standard between reporting parties and TRs (and TRs and relevant authorities) should speed up the reporting process and thus reduce resource requirements. It provides consistency and comparability in rejection feedback and thus more timely amendment to rejected SFTs.
			Tolerances in reporting discrepancies should prevent reporting parties and TRs from incurring more significant costs in the reconciliation process	
Allow all relevant authorities to access data in a timely and comprehensive manner, in order to build a more complete picture and thus better assess risks	Operational standards to aggregate and compare data across repositories	Competent authorities	Mandatory feedback from TRs to reporting parties, should help reporting parties to learn from past reporting errors and so reduce their future error rate.	One-off costs of developing ISO 20022-compatible systems and meeting with TRs to help develop a secure data exchange protocol and the associated IT investment costs.
			One-off costs of developing suitable ISO 20022-compatible IT systems. On-going costs of processing the information received from TRs.	
				Increased granularity and standardisation of data received from TRs should improve the ability of competent authorities to analyse data, and hence monitor and identify early signs of systemic risk in the SFT market.
				Common submissions from TRs should reduce the resource requirements on competent authorities in aggregating this data for submission to the FSB.

#### Benefits

##### *Operational standards for data collection*

In the validation process, the requirement on TRs to explain the nature of reporting errors to counterparties should, over time, help to improve the standard of reporting by counterparties, as it becomes clearer which kind of inputs are appropriate and which are not. In other words, this mandatory feedback process should help reporting parties to learn from past errors and thus reduce their error rate (and improve their quality of reporting) with time. In the longer term, this should reduce the burden (and ultimately the cost) of complying with the reporting requirements for reporting parties, as well as the burden of the validation process itself for TRs. Furthermore, the use of a common messaging standard, ISO 20022, in this process should benefit the market by providing consistency and comparability in rejection feedback and thus more timely amendment to rejected SFTs.

A further anticipated benefit of ESMA's RTS is that, by providing some flexibility/tolerances in terms of reporting discrepancies, this should prevent reporting parties and TRs from incurring more significant costs

in the reconciliation process. Such discrepancies may arise due to inconsistent interpretations and/or standards in use at different reporting parties. However, providing these discrepancies are small or relate to fields which are not crucial, the repetition of the process in order to achieve 100 per cent reconciliation is unlikely to create substantial benefits (that justify the costs of repeating the reconciliation process). However, as discussed in 4.1.3 above, a number of respondents suggested that the acceptable tolerances were not wide enough and that there would, therefore, still be a significant amount of non-reconcilable reporting discrepancies.

A specific benefit of the RTS to TRs is that it allows for the removal of expired or terminated transactions after one month from the reconciliation process date, as this should help to keep TRs' reconciliation processes more manageable. This choice of time period is key to ensuring the right balance between the numbers of reconciled trades on the one hand and the regulatory burden on TRs on the other. TRs should also benefit from more legal certainty, as a result of the requirement that lack of compliance with business rules or content validations will give rise to automatic rejection. This should also provide greater legal certainty to the reporting parties themselves.

#### *Public data*

The requirement to publish aggregate data is already included in EMIR. However, due to the lack of consistency and standardization of the public data, the benefits were limited as it was not straightforward to aggregate and analyse the data. The benefits of the RTS proposed by ESMA with respect to the SFTR would be that: (i) more granular data would be available (relative to EMIR); and (ii) data would be published in a standardized format. This should facilitate data analysis and market monitoring.

#### *Data made available to authorities*

The use of consistent standards regarding the reporting from trade counterparties to TRs and then from TRs to authorities will ensure that there are not unnecessary cost duplications at these two stages of the reporting process. The RTS stipulate that the transaction data will be provided in the same exact format and based on very similar XML schema definition (XSD) and, as such, the TRs are not to make any transformations, technical or otherwise, to the transaction data it receives from counterparties. This will limit costs incurred by TRs in processing the data received by reporting parties and passing it onto the relevant authorities.

The provision of transaction-level reporting will allow authorities to better assess the risks related to the integrity of the price formation and the orderly functioning of the SFT markets. Trade-state reports (showing the latest state of each outstanding SFT) will also enable authorities to access the most granular trade-level data, i.e. the latest state on all the outstanding trades that is required for financial stability, market monitoring and surveillance of bank-like risks and level of interconnectedness in the financial system.<sup>43</sup> Furthermore, to the extent that ESMA proposals would ensure compatibility and integration of SFT data with the data reported under other reporting regimes existing in the EU, it would enable the authorities to build a more complete picture of the financial system.<sup>44</sup>

One respondent to ESMA's Discussion Paper argued that "[f]or feedback reports, specifically daily trade report and trade state report, these reports are redundant and add little additional value to reporting entities since this data is already held by them and should be made accessible to them via the TR GUI. By contrast the provision of rejection and reconciliation status report add significant value and contribute to timely reporting and improved data quality." Furthermore, the end of day rejection and reconciliation reports would be useful to: (i) corroborate the submissions; (ii) act on any potential SFTs that have not yet been corrected; and (iii) enable straight-through processing and workflow automation.

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<sup>43</sup> ESMA Discussion Paper, p. 96.

<sup>44</sup> ESMA Discussion Paper, p. 97.

## Costs

### *Direct costs*

TRs would be faced with the direct costs of establishing procedures to verify the completeness and correctness of data. The direct one-off costs to TRs could include the costs of: the set-up of relevant IT software and hardware;<sup>45</sup> the re-adjustment of current systems to make them consistent across TRs;<sup>46</sup> additional staff resourcing and staff training; and developing internal policies and procedures. TRs may also incur some direct ongoing costs in relation to data storage and IT maintenance to ensure compliance with the new rules on validation, reconciliation, publishing data and reporting to authorities.

Our fieldwork indicated that implementation would be reflected primarily in the initial IT build and on-boarding costs, with TRs focused on developing an automated system of verification which could be incorporated into existing workflows to help limit any material ongoing cost impacts. Given that the costs would be largely bundled up in the initial build of the system, there was seen to be particular difficulty in separating out the Level 1 and Level 2 costs. Aside from the initial build and on-boarding, there are expected to only be minor changes elsewhere (in terms of other systems and controls, human resources and (re-)papering agreements). In terms of ongoing costs, while the verification process would be largely automated, TRs would nevertheless incur ongoing costs in terms of the human resources required for handling exception management and service support. One-off and ongoing compliance cost estimates are provided at the end of this section.

One concern raised was around the costs associated with communicating with other TRs. If it were possible to use the same communication channels as those already built for EMIR then the costs would be limited, or even negligible, but if new channels would be required this would incur additional upfront build costs. That said, we acknowledge that inter-TR reconciliation is a requirement of the Level 1 text, and thus the costs of this should not be ascribed to ESMA's technical standards.

### *Operational standards for data collection*

In terms of the operational standards for data collection, there may be transitional costs until all required standards and protocols are available to all market participants (e.g. Unique Trade Identifiers). In an extreme case, this could also limit the benefits secured from the application of this part of the SFTR. Transitional costs for TRs and reporting parties may be further inflated by strict XSD schema requirements relative to a more flexible requirement. However, while a more flexible approach could limit the transitional costs, it would also jeopardise the benefits of having a consistent reporting approach across counterparties and TRs (and as a result impose additional costs on competent authorities). Therefore, despite inflating short-term transitional costs, the presence of a standardised and uniformly applied schema would in the longer term improve data quality and lower ongoing costs of complying with the SFTR (in particular, with rules governing publishing and reporting to competent authorities).

### *Public data*

No material concerns were raised regarding technical standards on public data during the stakeholder engagement.

### *Data made available to authorities*

No material concerns were raised regarding technical standards on the data made available to authorities during the stakeholder engagement.

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<sup>45</sup> This was noted by one of the TRs responding to ESMA's Discussion Paper, which said that "additional machine and databases costs will arise from the requirement of reconciling additional data report[ed] under SFTR".

<sup>46</sup> For example, to ensure the daily reconciliation cycle follows the same time schedule across all the TRs, enhancing secure communications systems between TRs, and between TRs and market participants.

### Cost estimate

While TRs' were not able to provide their own estimate of the likely build cost of the system for verifying the completeness and correctness of data reported to them, they were nevertheless able to provide some guidance on the potential scale of this project which has allowed us to make an informed estimate of the potential range of one-off costs. It was considered that, given the similarities with EMIR, there would be some scope for reusing and modifying the EMIR build, rather than starting the build from scratch. While this would serve to limit costs somewhat, it was still suggested that the build would be overseen by a project team of perhaps 6-8 members of staff accompanied by a full-time project manager. On the basis that the project team is a mixture of IT and compliance staff, this suggests total one-off compliance costs across all TRs to be in the region of **€3.4-6.5million**.

On an ongoing basis, we expect from our discussions with TRs that exception management and service support may require in the region of 15 to 20 additional compliance staff per year across all TRs (on the basis that some TRs may choose not to provide this service). Using typical compliance staff salaries, this equates to an ongoing cost across TRs in the order of **€1.6-2.1million** per year.

Again, these estimates come with the caveat that there is a difficulty for TRs (as with other stakeholders) to fully distinguish between costs derived from LI and from the Technical Standards, and as such that these cost estimates cannot be seen as attributable solely to the latter.





## Appendix



Europe Economics



# 5 Appendix: Methodology and Fieldwork

## 5.1 Overview of approach

As explained at the start of Chapter 4, this cost-benefit analysis was undertaken as a two stage process. The first stage made use of desk-based research, as well as responses to the EC's consultation on the SFTR and to ESMA's discussion paper on the draft technical standards, in order to map out the economic logic connecting the technical standards to different expected costs and benefits. The second stage then involved analysing, both qualitatively and quantitatively, the findings of the stakeholder engagement programme, to determine to what extent stakeholder evidence supports and/or contradicts the expected costs and benefits set out in the first stage of the analysis. The next section of this appendix provides details of the stakeholder engagement programme undertaken.

## 5.2 Stakeholder engagement programme

The stakeholder engagement programme involved a combination of structured interviews and survey responses. Relevant stakeholders were given the option of participating by either submitting a survey response, participating in a structured interview or a combination of both.

The programme covered both TRs and reporting parties, with several key categories of reporting party approached, namely: agent lenders; alternative investment fund managers; assets managers; investment banks; brokers; prime brokers; Central Counterparty Clearing Houses (CCPs); Central Securities Depositories (CSDs); commodity trading firms; custodian banks; trading venues; tri-party agents and non-financial firms. Several of the reporting parties that responded to the study are active in more than one of the areas listed above (and, in some cases, several of the areas listed above).

The purpose of the structured interviews was to provide in depth views on the expected impacts of ESMA's draft technical standards, while the purpose of the online surveys was to broaden the reach of the stakeholder engagement programme.

A single questionnaire was prepared for TRs and reporting parties (attached as an annex to this study), with display logic used to direct the type of respondent (i.e. TR or reporting party) to the correct set of questions. This questionnaire was used for both the structured interviews and online survey, although the structured interviews were able to investigate some of these questions in greater detail, as well as discussing some additional questions/issues that would have otherwise been difficult to garner reliable views on through an online survey.

The full survey is provided as an Annex to this report.

Relevant stakeholders were identified and contacted from August 2016. As well as reaching out to affected stakeholders directly, details of the study and the questionnaire itself were distributed through II trade associations (some national and some EU-wide) that agreed to help promote the study amongst their members. A range of different trade associations were approached (including those representing brokerage, capital markets, clearing houses, investment management and financial markets more broadly), in light of the undoubted diversity of participants on the reporting side. Interviews were held between October and

December, as this allowed stakeholders some time to digest the contents of ESMA's consultation on the draft technical standards, which was published at the end of September 2016.

The stakeholder engagement programme targeted 12-15 structured interviews, including originally: 2-3 TRs, 8-10 reporting parties, and 2-3 NCAs. It was agreed, at the kick-off meeting, that the NCAs would be dropped and the interviews of reporting parties (likely the most diverse group) increased.

Thirteen interviews were held in total, comprising of four TRs, eight reporting parties and one firm directly involved in providing reporting solutions to reporting parties. The reporting parties engaged with included agent lenders, investment banks, custodian banks, asset managers, prime brokers, tri-party agents, CSDs and CCPs. In addition to the 13 interviews, a further eight online reasonably complete survey responses were received, which included responses from non-financial counterparties. The EU countries covered by the stakeholder engagement programme are: Belgium, France, Germany, Luxembourg, Spain and the UK (though a more granular breakdown of respondents by stakeholder type and country headquarters cannot be provided for confidentiality reasons).

### 5.3 Modelling

The results of the fieldwork were combined with our pre-existing qualitative analysis of the mechanisms of effect and our desk-top research to produce quantitative estimates of compliance estimates and to assess any wider impacts (such as indirect, market effects) and any benefits. This is described in more detail in the sections relating to the individual Technical Standards.