# Consultation Paper

Draft RTS and ITS under SFTR and amendments to related EMIR RTS

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they

1. respond to the question stated;

2. indicate the specific question to which the comment relates;

3. contain a clear rationale; and

4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **30 November 2016.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading Legal Notice.

Who should read this paper

All interested stakeholders are invited to respond to this consultation. In particular, responses are sought from financial and non-financial counterparties to securities financing transactions, tri-party agents, agent lenders, central counterparties (CCPs) and trade repositories (TRs), as well as from all the authorities having access to the TR data.

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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
CSD	Central Securities Depository
CPMI	Committee on Payments and Market Infrastructures
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
SFTR	Regulation (EU) No 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

1 Executive Summary

Reasons for publication

This Consultation Paper is published as part of ESMA's consultations on Level 2 measures under the Securities Financing Transactions Regulation (SFTR) as well as 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 detailed information on the procedure and criteria for registration as TR under SFTR. Section 4 details the use of internationally agreed reporting standards, the reporting logic under SFTR and the main aspects of the structure of an SFT report. Section 5 covers the requirements regarding transparency of data and aggregation and comparison of data. Section 6 details the access levels of authorities. Section 7 contains the tables of fields, for the relevant types of SFTs, as well as a summary of all the questions.

Next Steps

ESMA will consider the feedback it received to this document in the fourth quarter of 2016. The final report and the draft technical standards will be submitted to the European Commission for endorsement by the end of Q1/beginning Q2 2017.

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[1].

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. Recital 10 of SFTR establishes that the new rules on transparency should therefore 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. 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 4.2.4.4) 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

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

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 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 the report 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)[2]. These 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 aggregate the total national/regional data for these markets in order to assess global trends in financial stability.

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[2] http://www.financialstabilityboard.org/wp-content/uploads/r_130829b.pdf

8. Based on those recommendations, an FSB Data Experts Group (hereafter DEG) was established to develop standards and processes for global data collection and aggregation on SFTs that are relevant for financial stability monitoring and policy responses. Such standards and processes would allow the FSB to collect periodically (at least monthly) from national/regional authorities aggregated data on securities lending, repos, and margin lending based on granular information collected at the national/regional level. The standards and processes also include recommendations for data collection procedures for national/regional authorities that should help minimise potential problems in global aggregates, such as double-counting. The FSB consulted publicly the proposed standards and processes on 13 November 2014. On 18 November 2015 FSB issued a report setting out the finalised Standards and processes for global securities financing data collection and aggregation[3](FSB November 2015 Report, hereinafter) for reporting of aggregates by national/regional authorities to the FSB as well as recommendations to national/regional authorities related to the collection of data from market participants.

9. In accordance with the FSB November 2015 report, FSB would require submission on a monthly basis of data aggregates. Further to the definitions of the specific data elements, data templates and data architecture for the FSB to become a global data aggregator (of aggregate data), there are six recommendations for the national/regional authorities when providing the data to FSB.

10. By the end of 2015 FSB established two subgroups – Governance and Data Management group. The Governance group will work on issues associated with the governance of the 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; (iv) and consideration of publishing selected aggregated data.

11. Meanwhile, the Data Management group will work on technical issues to operationalise the global securities financing data collection and aggregation. The technical issues include: definition of the template for national/regional authorities to report to the global aggregator; determination of the technical format (DSD - data structure definition) and channels for data transmission to the global aggregator; identification of the codes for classification;

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

development of the detailed guidelines and definitions; and preparation of pilot exercises in coordination with national/regional authorities to verify that the whole process is working properly. The work of both groups is expected to be completed by Q3 2016 and ESMA intends to take into account, to the extent possible, all those instances where the relevant technical standards have to be aligned to ensure compliance with the FSB data collection framework.

12. In addition, the FSB will continue to work on developing possible measures of "collateral velocity" (including the collateral re-use measurement) and identifying appropriate data elements for deriving these measures with the aim to integrate such data elements into the global data standards. Recommendations on this issue would be developed by the end of 2016, leveraging on the work of WS5 Re-hypothecation and re-use Experts Group on the potential financial stability issues associated with collateral re-use and on further consultation with the industry. Given the risk that the potential additional elements on collateral might be determined after the ESMA's submission of the technical standards to the European Commission, ESMA will pay close attention on the relevant developments in that area.

2.3 EMIR and SFTR

13. 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.

14. 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.

15. 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 supervisor of TRs, ESMA has been able to successfully supervise the registered TRs and to establish a robust

supervisory regime. As a result, there are several additions which 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.

16. 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.

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

2.4 Statement about ESMA's empowerments under Art. 13, 14 and 25 of SFTR

18. 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.

19. 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 of the UCITS and AIF. The information on SFTs and total return swaps shall include the data provided for in Section A of the Annex of SFTR.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. Draft implementing technical standards relating to ESMA's mandate under Article 25 SFTR (Exchange of Information with ESMA) will be included in the final report to be submitted to the European Commission. ESMA is not consulting on these standards given their nature, which does not impact stakeholders outside the regulatory community.

3 Registration requirements under SFTR and under EMIR

3.1 Registration process under SFTR

26. Under SFTR, ESMA is mandated, among others, to draft regulatory technical standards and implementing technical standards regarding the registration and extension of registration of TRs for the purposes of reporting of SFTs.

27. 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) SFTR, once the completeness of the application is notified, within 40 working days of the notification referred to in Article 5(6), ESMA shall examine the compliance of the application for registration and for an extension of registration with Chapter III SFTR and adopt a fully reasoned decision accepting or refusing the registration and the extension of registration.

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

3.2 Technical Standards on registration

3.2.1 Registration framework

29. Article 5(1) 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.

30. 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 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[4] (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 EMIR. Given that Article 12 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.

31. 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) 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" 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 EMIR should be understood as references to Article 4 SFTR. For instance, the TRs must ensure the confidentiality, integrity and protection of data received under Article 4 SFTR in the same way as they ensure the confidentiality, integrity and protection of data received under Article 9 EMIR.

32. 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.

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[4] 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.

3.2.2 ESMA's mandates on technical standards on registration

33. 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.

34. 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.

3.2.3 Interaction between RTS 150/2013 and the draft RTS on registration and extension of registration under SFTR

35. The RTS 150/2013 have proved to be solid initial rules with regards to new market infrastructures such as the TRs. There are however some aspects thereof which should be updated to fully cover the responsibilities that TRs are given under SFTR, in particular those under Article 5(2) SFTR, as well as the experience gained by ESMA and the clarifications provided to the trade repositories 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.

36. SFTR explicitly requires the establishment of procedures which 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.

37. In order to achieve consistent outcomes and to facilitate implementation, ESMA will draft RTS on registration and extension of registration under Article 5 SFTR which, to the extent possible, will build on the existing RTS 150/2013 and will introduce 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.

38. Given that Article 5(7)(c) 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 3.6 of the Consultation Paper.

39. 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) SFTR require ESMA to ensure consistent application and uniform conditions of the application of Articles 5(1) and 5(2) 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.

3.3 Updates to some already existing provisions in RTS 150/2013

40. ESMA will incorporate all the provisions included in the existing RTS 150/2013 into the draft RTS registration and extension of registration under SFTR, except those in Article 19 RTS 150/2013 which are explicitly referred to in Article 5(2) SFTR and are included in paragraphs 58-60 of the Consultation Paper.

41. Furthermore, based on the experience gained during the registration of TRs and their subsequent supervision, ESMA proposed in the DP that some of the existing provisions in RTS 150/2013 would need to be better specified when incorporated to the draft RTS on registration and extension of registration 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.

42. With respect to the requirements regarding policies and procedures indicated in Article 2 RTS 150/2013, ESMA proposed in the DP 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, it is proposed that the policies are approved by the Board, whereas the procedures are approved by the senior management. Furthermore, ESMA believes that an additional provision regarding the internal communication of the policies to the staff employed by the TR or dedicated to the TR should be included. 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. This proposal has been supported by the respondents. In order to ensure the adequate training and communication on policies and procedures, ESMA proposes that there is a documented acknowledgement by the staff on their awareness with policies and procedures.

43. With regards to the aspect of operational separation, it is worth mentioning that 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, it will be essential that the entity applying for registration under SFTR or for extension of its registration is able to demonstrate that there are separate procedures, people 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. Operational separation was widely commented by respondents. It was mentioned that having separate people 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 proposed to have the flexibility to 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 has taken into account this for the purpose of the draft RTS.

45. Furthermore, ESMA proposed an enhancement for the purposes of the draft RTS on registration and extension of registration under SFTR where the existence and applicability of different internal control mechanisms is covered. ESMA intends to leverage on the existing controls at the level of the TR and ensure more efficient supervision. 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. Lastly, ESMA proposed the elimination of the reference to "internal review function", given that the 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.

46. Some of the respondents mistakenly linked this amendment with the one on operational separation and the establishment of separate 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.

47. 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 evaluate the commercial viability of the applicant and also to establish the baseline for capacity and performance planning at the TR. One of the respondents questioned the objective of assessing commercial viability of

the applicant, whereas another one stressed the difficulty of estimating the level of reporting activity in terms of reporting volumes as required, whenever a new regulation or reporting service is implemented. ESMA considers the detailed business plan information as 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.

48. 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 that the following additional information with respect to the outsourcing arrangements mentioned in Article 16(c) RTS 150/2013 should be provided: (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/need of the TR that is outsourced; (iii) measures/actions to be taken in the event of not meeting service level targets. This proposal has been supported by respondents and there have been also requests to better specify those requirements.

49. Furthermore, with regards to the access rules for reporting parties, ESMA proposed that the TRs establish separate accounts for the reporting counterparties, defined as the entities discharging their reporting obligation with the relevant submissions. Most importantly this would further facilitate the transfer of counterparties' records between TRs and will level the playing field across TRs. This aspect was objected by some respondents, with particular emphasis on the potential cost for the TRs and for the small and medium reporting counterparties of implementing such a solution across all participants. ESMA takes note of these responses and proposes that TRs allow the reporting counterparties, which are not participants to the TR, to request separate accounts if they consider that this is needed in view of their reporting volumes.

50. Furthermore, ESMA proposed establishing a requirement for the TRs to provide a description of the channels used to disclose the information regarding the access by reporting parties[5] to the TR. This increases the transparency of the access to the TR and

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[5] Reporting parties are the entities which are participants of the TR and they may or may not be counterparties to a contract.

facilitates the on-boarding of potential clients, particularly during the initial stages of kick-off of the reporting regime. No comments were received on this proposal.

51. Finally, 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 policies and procedures. No comments were received on this proposal.

52. 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 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. No comments were received on this proposal.

53. ESMA proposed that the following additional information is provided with respect to the business continuity plan of the TR applicant: (i) Plans, procedures and arrangements for emergencies handling and personnel safety; (ii) 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 (iii) Plans, procedures and arrangements to recover the TR system, application and infrastructure components within the prescribed recovery time objective. No comments were received on this proposal.

54. 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. No comments were received on this proposal.

55. 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. No comments were received on this proposal.

56. Finally, 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, i.e. demonstrate that the details of the SFTs are shown to the relevant authorities in the same manner in which they have been reported by the counterparties or

with certain additional information where required so, in accordance with the RTS under Article 12(3) SFTR. No comments were received on this proposal.

Q1. **Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.**

3.4 New provisions included in RTS on registration and extension of registration under SFTR

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

57. This section includes the proposals as well as the feedback received on those additional aspects which should be taken into account when registering or extending registration of TRs under SFTR.

58. As mentioned earlier, Article 5 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.

59. 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) 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 SFT 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.

60. 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 which are submitted to ESMA.

61. ESMA received a strong support on the proposed framework. Most of the respondents commented that they have already in place the requested procedure. Some of the details of the proposal, however, were considered as too burdensome by some respondents. In particular, the requirement to verify the availability of the relevant authorisation of the reporting entity by the reporting counterparty was considered as too onerous by some respondents, given the need to establish a know-your-customer (KYC) like procedures. Some others argued that there were some particular instances, i.e. the "mandatory delegation" of reporting under Article 4(3) SFTR, where this burden would not be in the spirit of SFTR to adequate the reporting requirements to the small and medium non-financial counterparties (SME NFCs). ESMA takes note of the comments with regards to the SME NFCs and the rest of situations under Article 4(3) SFTR, e.g. the reporting obligation of the AIFM or the UCITS management company, and would draft the technical standards accordingly. However, the rest of the instances where there is a delegation of reporting under Article 4(2) SFTR, the reporting party should be able to attest to the TR that they are allowed to report on behalf of the relevant parties to the SFT. ESMA considers that this requirement is paramount to ensure the confidentiality of data and the adequate provision of the relevant feedback information. ESMA will include the reference to the particular procedures under the operational standards for data collection included in section 5.1.

3.4.2 Proposals and summary of feedback with respect to the rest of proposals

62. With regards to the identification of the competent authority, so far 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 SFTR 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 would need to identify the relevant competent authority of that Member State when applying for registration and for extension of registration. No comments were received on this proposal.

63. 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. In addition, ESMA proposes that 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.

64. In order to better assess the TR's IT system, as a supervisor of TRs, ESMA considers 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.

65. In addition, following the requirement established in Article 12(3)(d) 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) is explicitly included. No comments were received on this proposal.

66. Furthermore, also stemming from the requirement established in Article 12(3)(b)(ii) SFTR, ESMA proposed that 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 fulfil the relevant operational requirements set out in the technical standards under Article 12(3)(b)(ii) SFTR. No comments were received on this proposal.

67. 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) EMIR, nevertheless it is considered important that the TRs provide practical information how exactly this will take place. The respondents supported this proposal, however indicated the need to have guidance on the portability of data between TRs. ESMA takes note of this request and proposes the inclusion of a requirement regarding the voluntary portability between TRs.

68. 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) 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. The respondents requested the publication of the methodology under which the fees will be calculated for the correct assessment of this requirement. ESMA will be consulting on the technical advice under Article 11 in Q3-2016.

69. 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-attacks. One of the respondents suggested the adherence of TRs to CPMI-IOSCO's Guidance on cyber resilience for financial market infrastructures, whereas another one proposed to simplify the cyber-security requirements and include them as amendments to the current IT and confidentiality policies and procedures. ESMA takes note of the acceptance of the reference to the guidance on cyber-risks and cyber-attacks and will draft the RTS accordingly.

Q2. **Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.**

3.5 Requirements for new applicants under SFTR

70. 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 which 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.

3.6 Requirements for extension of registration under SFTR

71. SFTR establishes a framework for the extension of registration which is sustained 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 27 of the Consultation Paper.

72. In order 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 which 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 SFTR. All respondents supported this proposal. ESMA is taking this into account for the purposes of the RTS on registration and extension of registration under SFTR.

3.7 Format of the application under SFTR

73. As paragraph 34 of the Consultation Paper states, ESMA also should 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[6], 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 future use and reproduction. In order to facilitate the identification of the information submitted by a trade

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[6] 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.

repository, it is requested that documents included with an application should bear a unique reference number.

74. 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.

3.8 Amendments to RTS 150/2013

75. As indicated in Section 3.2.3, the current RTS 150/2013 established a solid basis for the registration requirements applicable to TRs. However, the experience gained during the registration process and the supervision of TRs indicates that some of the existing provisions in RTS 150/2013 should be specified better.

76. Furthermore, ESMA understands that it is of utmost importance that the registration requirements under the two regimes 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 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 3.6 should not be taken into account[7].

77. ESMA proposes that all the amendments considered in Section 3.3 are taken into account also for the purposes of registration of TRs 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 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.

78. Finally, with regards to the new proposals detailed in Section 3.4.2, ESMA understands that all the proposals, except the one relating to the payment of fees as a condition for

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[7] 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..

registration, which is not specifically referred to in EMIR, should be taken into account for the amendments of RTS 150/2013. Notwithstanding this, the specificities of the fees to be paid and the modalities of payment for the purposes of registration and supervision of TRs under EMIR are detailed in the EMIR TR Fees Regulation[8]. From that perspective, ESMA understands that those provisions are also covered, hence the consistency between the requirements under SFTR and EMIR is also ensured.

Q3. **Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.**

3.9 Format of the application under EMIR

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

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[8] 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.

4 Reporting

4.1 ISO 20022

80. 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.

81. 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.

82. 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[9]. 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.

83. 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.

84. Overall the market participants agreed that ISO 20022 would comply with governance requirements and no issues are foreseen in using XML.

85. 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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[9] 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 formats of 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. As a result, 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 varying practices across the TRs, thereby hampering the access to data and the correct aggregation and comparison of data across TRs. Therefore, such inconsistencies in information that market participants report to TRs are avoidable through the use of standardised ISO 20022 reporting regime by all actors without exceptions.

86. ESMA understands that other standards such as FpML may apply 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. Smaller market participants are expected to 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)

87. 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 to report. Similarly, under the same Article, the management company of an UCITS or an AIF is responsible to report the SFTs concluded by those.

88. ESMA described in the Discussion Paper that the definition of counterparties is contained in Article 3 SFTR and it means both financial counterparties and non-financial counterparties. Furthermore, the definition of financial counterparty and non-financial counterparty is provided. 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.

89. 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 in the Discussion Paper, that, to the extent feasible, it intends to accommodate for those developments when submitting these TS to the EC.

90. 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 which leverages on EMIR experience and also from the perspective of non-financial counterparties, it ensures consistency with other EU regulations.

91. ESMA is also aware that there is another classification system mentioned in the FSB Report for Standards on SFT data collection and aggregation, 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 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[10]. If this is the preferred option, SFT reporting would use the ESA 2010

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[10] European System of Accounts ESA 2010, Chapter 1, Paragraph 1.01.

classifications for the counterparty sector to ensure alignment with European and global classification standards as well as with Money Market Statistical Regulation (MMSR) that already uses this classification when MMSR requires the reporting of the counterparty sector.

Q4. Do you consider that the currently used classification of counterparties is granular enough to provide information on the classification of the relevant counterparties? Alternatively, would the SNA be a proper way to classify them? Please elaborate.

92. ESMA described in the Discussion Paper that a party to an SFT that acts on a principal basis, that is on own account, is referred to as a counterparty of an SFT. The answers to the Discussion Paper did not question this approach.

93. ESMA stated in the Discussion Paper that a party to an SFT that acts as an intermediary and on behalf of a customer shall be defined as a broker. A counterparty may use the services of a broker or a lending agent to conclude an SFT. As an answer to the question in the Discussion Paper respondents proposed to differentiate between a broker and a prime broker as defined in Directive 2011/61/EU [11] ("'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.

94. 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.

95. ESMA stated in the Discussion Paper 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

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[11] 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.

acts on its own behalf and on its own book, it is the counterparty of the SFT. A lending agent is a role only applicable in the case of securities lending.

96. Tri-party agents are the parties to whom the counterparties can technically outsource the collateral management of their SFTs.

97. CSDs and their participants are defined in greater detail in section 4.3.8. Depending on their role in the transaction, CSDs or the CSD participants also can be either a counterparty or a tri-party agent.

Q5. **Do you foresee issues in identifying the counterparties of an SFT trade following the above-mentioned definitions?**

Q6. **Are there cases for which these definitions leave room for interpretation? Please elaborate.**

4.2.1.2   Proposed approach from SFT perspective (transaction-only vs. transaction and position reporting of CCP-cleared SFTs)

98. In the Discussion Paper, ESMA asked to what extent it would be useful to establish complementary position-level reporting for CCP-cleared SFTs, taking into account the EMIR reporting experience.

99. Under EMIR reporting, counterparties are allowed to report post-trade events at position-level in addition to trade-level reporting providing that the conditions defined in Q&As (TR Question 17)[12] are met. In particular, position-level reporting can be used if the legal arrangement is such that the risk is at a position level, all trade reports made to TR relate to products that are fungible with each other and the individual trades previously reported to the TR have been subsequently replaced by the position report, for example in the case between a clearing member and a CCP. If all conditions set out in the Answer 17 of EMIR Q&As are met, subsequent updates, modifications and life cycle events (including revaluations) can be applied to the report of the position and not to the reports of the original trades

100.   To avoid double-counting of the reports of trades and those of positions in EMIR, the reports of the original trades must be updated to have an appropriate status so that it is clear that they are no longer open. In practice this is done using the "Compression" value of the Action type.

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[12] Questions and Answers. Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR); https://www.esma.europa.eu/sites/default/files/library/2016-1176_qa_xix_emir.pdf

101. The EMIR position reporting (of the type being discussed here) is not intended to be an addition to trade-level reporting. Instead, it is a possibility that can be used when the conditions are met. In other words, it is not an extra reporting burden and participants are not required to report positions in addition to trades.

102. In the DP, ESMA noted that the question did not refer to the reporting of position-level collateral data as ESMA considered it already included in the respective section on collateral.

103. Most respondents to this question seemed to have interpreted this question as related to SFT reporting in general. The majority of them were of the view that there should not be complementary position-level reporting owing to the fact that Level I of the SFTR already requires transaction-level reporting, and mandating both types of reporting would result in high complexity and costs. The respondents also argued that position-level information could be derived from the transaction-level data by the TRs or by competent authorities accessing the data. Some respondents also provided general comments on the difficulties to report margin lending at a transaction level (see section 4.2.4.5 on margin lending).

104. Only three respondents (representing CCPs and a trade repository) specifically focused on the CCP-cleared trades in their responses. These respondents also were of the view that no complementary position-level reporting should be required from a CCP perspective. One respondent noted that ESMA, in determining whether to establish complementary position-level reporting, should take into account the different rules in place for CCPs concerning the moment of entry of transfer orders into the respective systems as well as different position models used by CCPs. In response to this, ESMA would like to note that complementary position level reporting would be optional and could be used to substitute the reporting at transaction level only if certain conditions (specified further below) are met. Therefore, position-level reporting would not be an additional reporting burden to firms.

105. However, two respondents noted that certain post-execution lifecycle events and collateral changes might be better suited, or even more, it might be only possible, to being reported at position level, as these activities are generally managed at position level, and reporting should reflect this. Therefore, consistent with existing reporting under EMIR, reporting parties should have the option, but not the obligation, to report at a position level the details of the cleared SFTs should they desire.

106. Taking into account the feedback received and the fact that the majority of respondents provided answers in relation to SFT reporting in general, ESMA would like to further investigate the need to introduce optional complementary position-level reporting of

centrally cleared SFTs. ESMA would like to clarify that such complementary reporting would be based on the principles currently set out in the EMIR Q&A (TR Question 17)[13] Position-level reporting would be possible provided that all of 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 the 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 (Action type C) and then reporting the resulting net position either as a new position or as an update to an 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 reuse tables of fields.

f. If these conditions are met, then 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 the reports of the original trades/events.

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[13] Questions and Answers. Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR); https://www.esma.europa.eu/sites/default/files/library/2016-1176_qa_xix_emir.pdf

107. As a result of the above, in those cases where valuation of the collateral can be provided only on CCP-cleared, the counterparties might not be able to report all the relevant details pertaining to their SFTs. This would hamper the achievement of the objectives of SFTR to provide transparency on the SFTs and of the reuse.

Q7. Based on your experience, do you consider that the conditions detailed in paragraph 106 hold for CCP-cleared SFTs? Please elaborate.

Q8. In the case of CCP-cleared SFT trades, is it always possible to assign and report collateral valuation and margin to separately concluded SFTs? If not, would this impair the possibility for the counterparties to comply with the reporting obligation under Article 4 SFTR? Please provide concrete examples.

<u>Suggested data elements to support transaction and position-level reporting</u>

108. The respondents generally noted that the data elements proposed in the DP were sufficient to support both transaction and position reporting. Two respondents suggested including an additional field "Level" to reflect an option to report at a position-level in line with EMIR. If it were decided to include the possibility of additional-position level reporting, a new field on "level" (with values "transaction" and "position") and a new action type on "position component" would have to be included 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".

109. Three respondents thought that the fields on UTI would not be relevant for position-level reporting, and two thought that clearing and execution timestamps would not be appropriate for position reporting. ESMA would like to clarify that in the case of additional position-level reporting for cleared trades, a UTI that represents the new position resulting from netting of individual trades should be reported.

Q9. Would the suggested data elements allow for accurate reporting at individual SFT level and CCP-cleared position level? In line with approach described above?

Q10. If so, are there any specific issues that need to be taken into account to adapt the EMIR approach to the SFT reporting?

Additional comments on the section

110. Three respondents that represent asset managers noted that the Discussion Paper was not clear on how to report securities lending transactions from a pool of securities that belong to different funds and their subsequent modifications. The respondents explained that, at the end of the day, the exact allocation among participating funds to the asset pool

is finalised on the basis of predetermined and precise rules that include regulatory and risk management ratios. Furthermore, respondents asked about the possibility to identify an asset pool among different funds as counterparty and the necessity to book funds individually. In the latter case, the respondents enquired whether it would be possible to use a single UTI for securities lending transactions with one-to-many relationships between the counterparties. ESMA would like to clarify that funds are considered counterparties to SFTs under the SFTR. Therefore, each fund as counterparty must report a separate transaction each with its own UTI. Section 4.3.6.2.2 describes the reporting of the securities allocated as collateral from the collateral pool of securities

4.2.2 SFT reporting logic

111.   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.

112.   The Discussion Paper proposed for the reporting of SFT details an EMIR-aligned approach based on "Action Type" (Approach A) and a reporting based on event types and technical action (Approach B). The majority of respondents documented their preference for EMIR-aligned Approach A, because Approach B could result in significant adaptations to existing reporting applications. Therefore, ESMA proposes to maintain the EMIR-aligned approach using "Action Type" for SFT reporting.

4.2.2.1 Action types

113.   In order to enable 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 treat the content of a report in the processing of the 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.

114.   The Discussion Paper proposed a set of action types for SFT reporting and asked for responses as to whether the proposed list was complete. The majority of respondents made proposals to change the list of action types.

115.   Several respondents proposed a consolidation of "Action Type" to report modifications to the terms of an SFT, whilst some respondents proposed a further differentiation of "Action Type" in order to have templates that are specific to the reporting the different types of SFTs. The proponents for the consolidation of action types stated that only having one

"Action Type" for modification would simplify the implementation of the SFT reporting, as reporting systems would not need to determine and differentiate the type of modification. Other respondents proposed additional values for "Action Type" in order to work toward a full and exhaustive list for SFT reporting based on the type of SFT. Based on the responses, ESMA would propose to limit the number of action types and to have only two action types, i.e. "Modification of business terms" and "Other modification" for the amendment of a reported SFT. The benefits of having only two action types would be: (i) a reduced number of action types and easier implementation, (ii) a separation between the reporting of data elements which entail modification to the business terms of the SFTs from those other which do not entail such modification.

Table 1– List of proposed action types	
Action type	Definition
New	Specifies that the report is for a new SFT.
Modification of business terms	Specifies that the report modifies at least some specific fields which refer to the business terms of a previously reported SFT.
	The information reported under this action type would compromise for instance an amendment of the price, the maturity date, or the rate of an SFT or of a collateral component.
Other modification	Specifies that the report modifies fields which do not refer to business terms of the SFT.
	The information reported under this action type would compromise for instance amendment of non-business terms of the SFTs such as for instance the valuation of the collateral or the domicile of the counterparty.
Cancellation	Specifies that a previously reported SFT report was incorrectly submitted and reported in error. Therefore, the originally reported trade is not valid.
Correction	Specifies that the report modifies a previously reported SFT data owing to an error in the generation, processing or submission of transaction report. It is required to distinguish the correction of an error from a change of economic terms of a transaction.
Termination	Specifies a dedicated report to fully terminate or partially terminate an SFT prior to contractually agreed end date or to terminate an open-ended SFT.

4.2.2.2 Reporting of SFT

116.   An SFT report would comprise data on the relevant type of SFT. A specific data field will define the specific types of SFT for which the report is made. On that basis the counterparty should report all those details of the SFT that pertain to the specific SFT type.

Reporting of repurchase trade

117.   The reporting of a repurchase trade would document the detailed terms of repo trades which would comprise the loan and the collateral pertaining to this type of SFT. The reporting of repo trades would follow the logic outlined in the trade scenarios under Section 4.2.4.1

Reporting of buy-sell back transactions

118.   Several respondents commented that a separate report for buy-sell backs is not needed. They proposed to report buy-sell backs using the same reporting scheme as repos. ESMA agrees that in broad terms the reporting of repo and buy-sell back transactions would follow the same reporting logic outlined in the trade scenarios under Section 4.2.4.1, as appropriate. However, certain reporting fields will not apply to both types of transactions and separate reporting schemas will allow for better validation of such fields.

Reporting of securities and commodities lending

119.   The reporting of securities and commodities lending report would provide the detailed terms of the trade which would comprise the loan and the collateral pertaining to this type of SFT. The reporting of securities lending transactions should follow the logic outlined in Section 4.2.4.2, as appropriate, while the reporting of commodities lending should be made in accordance with Section 4.2.4.4.

Reporting of margin lending

120.   The margin lending report would provide the outstanding balance and the detailed terms of the outstanding margin loan against a collateral portfolio. The margin lending report would also include an element to report the individual securities in the portfolio against which the outstanding loan amount is collateralised. The reporting of margin lending should follow the logic outlined in Section 4.2.4.5.

Reporting of margin pertaining to SFTs

121.   The reporting of margin allows the collateral giver and the collateral taker of SFTs to report the initial margin and variation margin deposited either to a clearing member or to a CCP as explained in Section 4.3.6.1. For instance, 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. The reporting of margin is explained in Section 4.3.6.1.

Reporting of re-use of collateral pertaining to SFTs

122.   The reporting of reuse of collateral pertaining to SFTs re-use report would provide information on collateral re-use by the reporting counterparty as the collateral taker. Collateral re-use would be reported independently of the underlying trades and the counterparty from which the reporting 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.

123.   It is worth mentioning that the substitution of collateral components would be reported as a change to business terms, while the daily valuation of the collateral would be reported as a generic modification. In the case of substitution, it would be enough to report the data by using action type "Modification of business terms" which would comprise the details of the substitution of the collateral component together with the most updated value of the collateral). If the collateral was not reported on the first day –it still would be expected to be reported with "Modification of the business terms".

Table 2 – Valid combinations of Action Types and Report Types		Action types					
		New	Modification of business terms	Other modification	Error	Correction	Termination/ Early Termination
Report types	Counterparty, loan and collateral data per SFT type	X	X	X	X	X	X
	Margin across SFT types	X	-	X	X	X	-
	Collateral Re-use across SFT types	X	-	X	X	X	-

Q11.   **Do you agree with the proposed report types and action types? Do you agree with the proposed combinations between action types and report types? What other aspects need to be considered? Please elaborate.**

Q12.   **The modifications of which data elements should be reported under action type "Modification of business terms"? Please justify your proposals.**

Q13.   **The modifications of which data elements should be reported under action type "Other modification"? Please justify your proposals.**

4.2.3 Direction of the trade

124. The Discussion Paper proposed aligning the reporting of the direction of the trade with the EMIR rules, i.e. the counterparty specifies whether it is the buyer or the seller in accordance with the specific rules set out in the DP.

125. While a slight majority of respondents expressed support for maintaining consistency with the EMIR approach as a principle, respondents raised several concerns regarding the specific rules proposed in the Discussion Paper. Furthermore, in the case of more detailed questions on the comprehensiveness and consistency of the proposed rules with the existing market conventions, majority of the respondents opposed the proposal presented in the Discussion Paper.

126. Most of the respondents that objected to the proposal stated that the buyer and seller terminology is not uniformly applicable to all types of SFTs. The terms "buyer" and "seller" are generally used for repos and buy-sell backs. Securities lending and margin lending use the terms "lender" and "borrower". Therefore, the mapping could result in an incorrect interpretation or implementation.

127. Some respondents highlighted that even if the terms "buyer" and "seller" were adopted for SFTR reporting then the rule for determining the buyer and seller in the case of securities lending and margin should be amended to designate the lender as the seller and the borrower as the buyer.

128. Furthermore, many respondents provided alternative proposals suggesting either to refer to "borrower" and "lender" or to the "collateral giver" and "collateral taker".

129. ESMA has considered this feedback and decided to amend the initial proposal in line with the received comments. In order to have terms that apply to all types of SFTs and that can be used without additional mapping, ESMA proposes to use the terms "collateral giver" and "collateral taker". Irrespective of the type of SFT, the counterparty would always know whether it provides or receives the collateral.

130. Consequently, ESMA decided to amend the initial proposal as follows:

- In the case of repo trades and sell-buy backs, 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 other counterparty shall be identified as the collateral giver.

- In the case of securities or commodities borrowing and securities or commodities lending, 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 other counterparty shall be identified as the collateral giver.

- In the case of margin lending, the counterparty to which credit is extended in exchange for collateral shall be identified as the collateral giver. The counterparty that provides the credit in exchange for collateral shall be identified as the collateral taker.

131. Additionally, one respondent commented that in the case of repos, a counterparty is both a buyer and a seller at different points in the transaction. In this respect ESMA would like to confirm that the counterparty role (collateral taker and collateral giver) is to be determined based on the opening leg of the repo or buy-sell back as previously specified.

Q14. **Do you agree with the revised proposal to use the terms "collateral taker" and "collateral giver" for all types of SFTs?**

Q15. **Are the proposed rules for determination of the collateral taker and collateral giver clear and comprehensive?**

4.2.4 Trade scenarios

132. This section of the Consultation Paper includes the reporting scenarios that have been identified as the most common scenarios at this stage. The entities in rectangular box with solid lines are counterparties. The entities in rectangular boxes with the dashed lines are other actors 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, while the dashed lines refer to broker and agency relationships of the SFT.
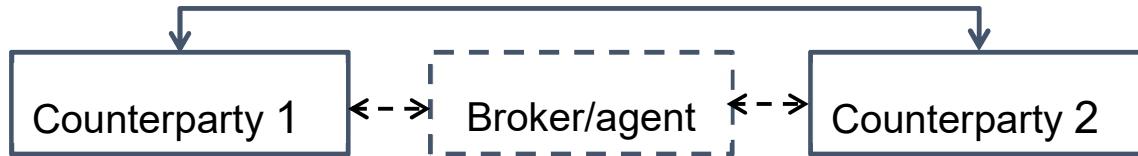
4.2.4.1 Repo and buy/sell-back

4.2.4.1.1 Repo trade without central clearing

133. The simplest form of a repo trade involves two counterparties, i.e. the lender of the security and the cash giver. 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.
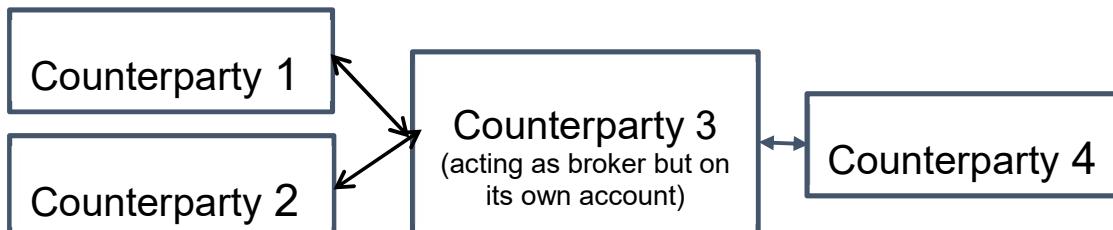
134.   In the repo scenario 1 on the bilateral trade with the intermediation of a broker/agent, Counterparty 1 and Counterparty 2 have to report the trade and identify the broker/agent that intermediated the trade.

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

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

- Counterparty 2 reports a repo transaction with Counterparty 1 and would provide 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.

135. In the repo scenario 2 on the 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 would be 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;

136. As the trades are bilateral, both counterparties would report that the trades arenot cleared in a dedicated reporting field, and they would not report a CCP clearing member in a further dedicated reporting field.

137. This scenario 2 would also cover the case where the broker acts as a principal to the transaction, as a "matched principal" broker (but the "Broker" field should be left empty). For the case of UCITS/AIFs, these funds should be identified as Counterparties 1 and 2 with their LEI and the fund management company could be identified as Counterparty 3. In case of outsourcing, the "Broker" field shall also be filled in with the LEI of the portfolio management company.

138. The scenarios depicted in the two diagrams under paragraphs 134 and 135 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 master agreement field (list: MRA, GMRA, EMA, ISDA 14, 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.

Q16. **Are you aware of any other bilateral repo trade scenario? Are there any other actors missing which are not a broker or counterparty? Please elaborate.**

Q17. **Do you consider that the above scenarios also accurately capture the conclusion of buy/sell-back and sell/buy back trades? If not, what additional aspect should be included? Please elaborate.**

4.2.4.1.2 Repo trade with central clearing

139. In a repo trade with central clearing, a CCP interposes between the two counterparties to the trade and becomes a counterparty to a trade. 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.

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[14] ESMA clarifies that SFTs performed under an ISDA agreement should be reported.

140. 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 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.

141. It is the understanding of ESMA that the principal clearing model is currently the most common client clearing model in Europe for repos. In repo scenario 3 on a CCP interposing itself between the two counterparties that are clearing members. It would require the reporting of two different trades, i.e. a trade between the Counterparty 1 and the CCP, and the trade between the CCP and the Counterparty 2, and in 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 would report a repurchase transaction with CCP. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP.

- Counterparty 2 would report a repurchase transaction with CCP. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP.

- CCP would report a repurchase transaction with Counterparty 1 and another one with Counterparty 2. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP in the second dedicated reporting field

that specifies the CCP. The "Clearing member" field should be filled with the ID of the 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 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 4.3.7 for more information on this topic.

- Taking into account industry feedback, it is worth mentioning that the scenario 3 should also cover the case where CCP perform SFTs as principals, i.e. for its 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 "Cleared" field should be filled in with 'false'.

142. Other variations of centrally cleared repo scenarios cover client[15] clearing models, where a counterparty is not itself a clearing member, but accesses a CCP via a third party who is a clearing member.

143. 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
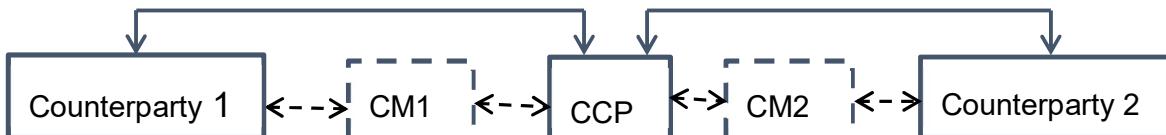
- Counterparty 1 reports a repurchase transaction with Clearing Member 1 (CM1). It would report that the trade is cleared in a dedicated reporting field and would report the

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[15] 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.

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

- CM1 reports a repurchase transaction with Counterparty 1. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP;

- CM1 reports a repurchase transaction with CCP. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP;

- CCP reports a repurchase transaction with CM1. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP in the dedicated reporting field that specifies the CCP, the "Clearing member" field should be filled with the LEI of CM1 and the "CCP" should be filled with the LEI of the CCP;

- The trades involving Counterparty 2, Clearing Member 2 and CCP would 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 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 4.3.7 for more information on this topic.

144. 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.

145. 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.

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

- Counterparty 1 reports a repurchase transaction with CCP. It would report that the trade is cleared in a dedicated reporting field and would report the LEI of its clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP of the clearing member.

- Counterparty 2 reports a repurchase transaction with CCP. It would report that the trade is cleared in a dedicated reporting field and would report the LEI of its clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP of the clearing member.

- CCP reports one trade with Counterparty 1 and another trade with Counterparty 2. It would report 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 "CCP" field 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 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 4.3.7 for more information on this topic;

146. 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);

147. 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 prior scenarios.

148. 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.

149.   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.

150.   Participants 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.

4.2.4.1.3 Market value of the collateral of repo, reverse repo BSB and SBB trades

151.   The Financial Stability Board recommends collecting information on the market value of the securities used in repo, reverse repo BSB and SBB trades. Therefore it is proposed to include the market value of the securities as a required element of transaction data for this type of SFTs (please see the table of fields in the Annex to section 10). It is envisaged that the reporting counterparties would update this information on a daily basis. The market value should be 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 "Other modification" action type.

Q18.   **Are the most relevant ways to conclude a repo trade covered by the above scenarios? Are the assumptions correct? Please elaborate.**

4.2.4.2 Securities lending scenarios

4.2.4.2.1 Bilateral securities lending scenarios
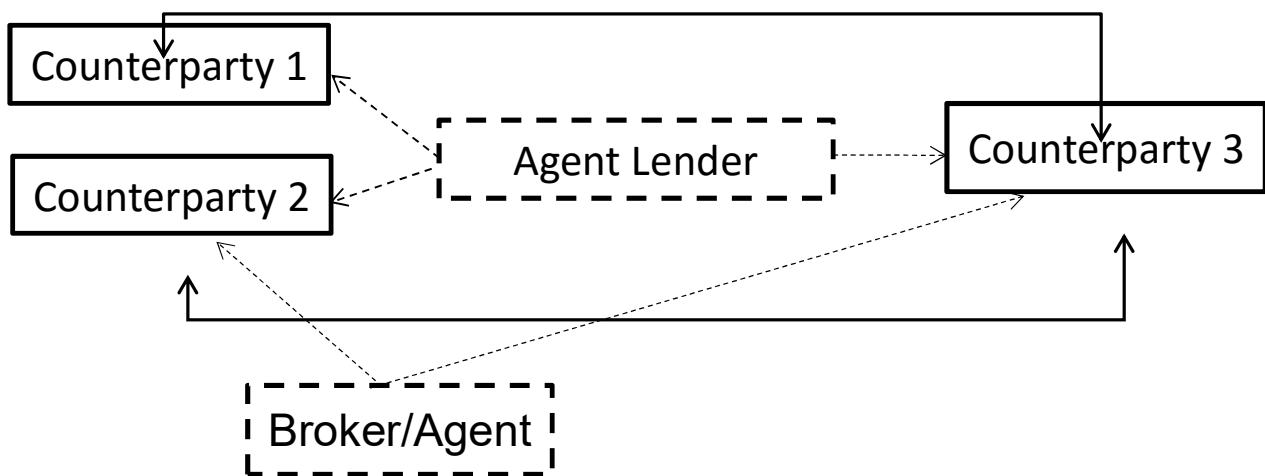
152.   In securities lending scenario 1 on a bilateral securities lending trade bilateral agreement without intermediary or "principal lender" model the beneficial owner of the securities (Counterparty 1) lends securities against collateral directly to another market participant (Counterparty 2) without using an agent lender or a CSD participant as an intermediary. Taking into account feedback from the industry, this scenario is the most used structure in the market.

Securities lending scenario 1 – Bilateral securities lending trade
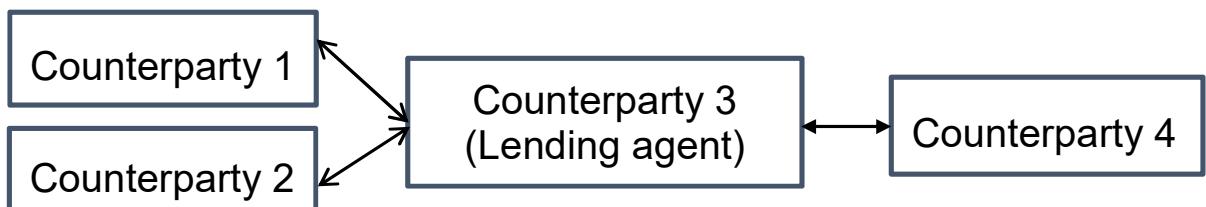
- Counterparty 1 reports a securities lending transaction with Counterparty 2 without specifying a broker.

- 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.

153. 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.

154. 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).

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

- Disclosed gent 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.

156. In case the identity of the actual counterparty is not disclosed by the lending agent by the reporting deadline or by the value date, whichever happens first, it should be the lending agent that is considered as the counterparty to the SFT. This is to ensure that an SFT has always two counterparties.

157. Taking into account feedback from the industry, the scenario 2 above should 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.

158. In the third case, that is illustrated below, there are two beneficial owners of the securities (Counterparties 1 and 2 in the scheme below but there could be multiple (more than 2) beneficial owners or only one beneficial owner) 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

159. In the example above:
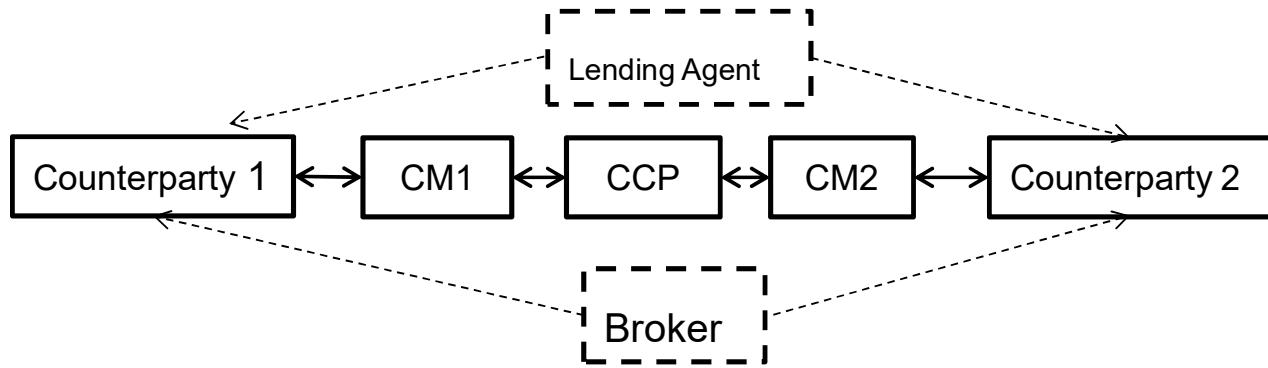
- Counterparty 1 reports a securities lending transaction with Counterparty 3, which is also agent lender;

- 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 would report that the trade is not cleared in a dedicated reporting field. They would not report a CCP clearing member. The field "Lending agent" should be populated with the LEI of the lending agent which is Counterparty 3.

4.2.4.2.2 Securities lending scenarios involving central clearing

160.   According to ISLA September 2015 report[16], 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.

161.   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

162.   In terms of reporting, it should be the same reports as for the principal clearing model for cleared repos described in paragraph 143 - 4 trades, 8 reports.

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[16] http://www.isla.co.uk/wp-content/uploads/2015/08/ISLAMarketReportSEPT2015.pdf

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

- CM1 reports a securities lending transaction with CCP, the field "Dleared" should be filled accordingly with "true", the "Clearing member" field should be filled with the LEI of CM1 and the "CCP" should be filled with the LEI of the CCP.

- CCP reports a securities lending transaction with CM1, the field "Cleared" should be filled accordingly with "true", the "Clearing member" field should be filled with the LEI of CM1 and the "CCP" should be filled 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 4.3.7 for more information on this topic.

163. In this central clearing scenario, a tri-party agent could also be involved and, if so, should be reported as discussed in section the earlier scenarios.

4.2.4.2.3 Market value of the securities on loan or borrowed

164. The Financial Stability Board recommends collecting information on the market value of the securities subject to the 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 (please see the table of fields in the annex to section13). It is envisaged that the reporting counterparties would update this information on a daily basis. The market value should be 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 "Other modification" action type.

Q19.   **Are the most relevant ways to conclude a securities lending transaction covered by the above scenarios? Are the assumptions correct? Please elaborate.**

Q20.   **Would it be possible to link the 8 trade reports to constitute the "principal clearing model" picture? If yes, would the method for linking proposed in section 4.3.4 be suitable?**

Q21.   **In the case of securities lending transactions are there any other actors missing?**

Q22.   **What potential issues do reporting counterparties face regarding the reporting of the market value of the securities on loan or borrowed?**

4.2.4.3   Unsecured securities or commodities lending/borrowing

165.   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. In case of fail to deliver collateral, no additional reporting should be made.

166.   Therefore, the SFTR reporting fields should cater for a possibility to report uncollateralised securities lending transactions. In such cases, it would be 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 reportedby mistake. This could be addressed by having a specific value or a specific field identifying an uncollateralised 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.

Q23.   **Do you agree with the proposal with regards to reporting of uncollateralised SFTs? Please elaborate.**

4.2.4.4   SFTs involving commodities

167.   The respondents to the DP acknowledge that security financing transactions are used to finance commodities. This generally occurs on a bilateral basis as presented in scenario

1. Consequently, the respondents agree that the scenarios presented in the DP cover all securities financing transactions involving commodities that fall in the scope of the SFTR.

168. The types of transactions are sufficiently clear for unambiguous classification of SFTs used to finance commodities. However, the respondents to the DP asked for clarification on the difference between commodities repo and a commodities buy/sell back. With reference to the definitions in article 3, ESMA considers the main difference between a commodity repo and a commodity buy/sell back to be that the former transaction is governed by an agreement whereas the latter is not. This implies that when a (bespoke) master agreement is in place which governs both legs of the transaction, the transaction is considered a commodity repo. In the absence of one master agreement for both legs, the transaction is a commodity buy/sell back.

169. In addition, the respondents to the DP asked for confirmation that trades where a counterparty has the right but not the obligation to repurchase is out of scope. ESMA has not explicitly facilitated the reporting of commodity transactions whereby the seller has the right but not the obligation to buy back the commodities, as these are indeed considered to be out of scope.

170. 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.

171. Respondents to the DP have indicated that a number of fields do not take into account the characteristics of the commodities financing transactions market and instead mainly relate to the securities repo and lending market. ESMA has made adjustments to improve the reporting of SFTs involving commodities.

172. 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. Still, most respondents to the DP deem this classification to be adequate.

Q24. Do you agree with the proposal with regards to reporting of SFTs involving commodities? Please elaborate.

4.2.4.5 Margin lending

4.2.4.5.1 Scenario description and counterparty data

173. The SFT regulation defines margin lending transactions 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". Limited information is available on margin finance in Europe.

174. While the scope of this definition is potentially very broad, SFTs are transactions that are considered to have economically equivalent effects. The current scope of the Regulation may potentially capture transactions of very different natures, possibly involving physical persons, or movements of assets between accounts that may very different economic effects.

Prime brokerage margin lending

175. In this context, the definition of margin lending is first narrowed down 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 FSB indeed focuses on margin lending provided to non-retail clients in its description of the standards for SFT data collection.

176. As margin lending takes place against a pool of collateral or on a portfolio basis, many respondents to the Discussion Paper indicated that data reporting on a transaction basis would be very challenging and costly, or simply not feasible. ESMA would therefore expect the prime brokerage margin lending counterparties to report position-level data with daily frequency.

Q25. Are there any obstacles to daily position reporting by margin lending counterparties? Do prime brokers provide information to their clients about intraday margin loans?

177. Based on the feedback received, margin lending takes place when a prime broker's cash balance with its clients falls below zero, by (re)using assets in the margin account as collateral. Margin loans may therefore 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 dealing on behalf of clients. Margin lending is therefore different from other SFTs, as there is no transaction settlement or possible clearing. Clients

receive information from prime brokers about their exposures, estimated collateral re-use, margin requirements and margin financing available, on a net position basis every day.

178. The relationship between financial entities involved in margin loans is relatively simple compared to other types of SFTs. The basic margin lending scenario involves the borrower and the lender as the two counterparties. Lenders are typically, but not exclusively, prime brokers, while borrowers are mainly investment funds. There is no central clearing involved. The margin lending scenario is illustrated as follows:

| Counterparty 1 | ←──────────→ | Counterparty 2 |

- 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 nor a broker in the respective reporting fields.

179. Beside bilateral counterparties, some respondents to the Discussion Paper indicated that there are (or could be) additional parties involved in margin lending such as tri-party agents and potential guarantors.

Q26. **Which kinds of guarantees or indemnifications exist in relationship to prime brokerage margin lending? Are there other parties possibly involved in a margin loan? Please provide an example.**

Other types of margin lending

180. A broader scope of the definition, for example not excluding retail clients, would potentially encompass many other types of loans. Margin loans are routinely provided by various types of financial intermediaries to their clients in order to meet short-term liquidity needs arising from their regular activities.

Q27. What types of loans or activities, other than prime brokerage margin lending, would be captured in the scope of margin lending under the SFTR definition? Please provide details on their nature, their objective(s), the execution and settlement, the parties involved, the existing reporting regimes that these may already be subject to, as well as any other information that you deem relevant for the purpose of reporting.

4.2.4.5.2 Transaction data

181.   Margin lending in the context of prime brokerage does not rely on standardised master agreements that govern most SFTs, but typically on bilateral prime brokerage agreements between the lender and the borrower that specify the terms and conditions of the margin account.

182.   Prime brokerage agreements are negotiated between prime brokers and their clients. The feedback received from the Discussion Paper suggests that these agreements comprise a number of features that are immediately relevant in the context of margin lending, such as a formula for calculation of the amounts that the prime broker can reuse for a given portfolio, the exposure netting parameters, but also lending and reuse limits.

183.   Respondents to the Discussion Paper indicated that margin lending generally takes place on an open rather than a fixed-term basis, and that interest payments are based on a floating rate basis with a fixed spread added to it.

184.   The Financial Stability Board recommends collecting some data elements specifically related to margin lending as end-of-day position snapshots.

Free credit balances, excluding short sale proceeds

185.   Based on the feedback received, the reporting of cash balances provided by prime brokers to clients is usually a position snapshot at the end of the business day. A counterparty´s cash position will either be net positive (i.e., net credit balance or an asset) or net negative (i.e., a net debit balance or a liability). The latter case is a margin loan.

186.   Therefore, a margin loan is synonym of negative cash balance. The amount of margin financing available is calculated on a daily basis by prime brokers and reported to their clients. However, the available balance may sometimes be amended during the day to reflect intraday market developments. On the other hand, a positive cash balance reflects the client's own money and does not influence the amount of financing available, and will not be used as collateral. The elements "Free credit balances" would therefore be

calculated as the amount of margin financing made available to a counterparty minus the outstanding margin loan(s). ESMA would therefore seek to collect data on the amount of margin financing available and the outstanding balance.

187. The reporting of margin lending upon transfer of money from prime brokers to clients imply that the cash balances reported would always be a negative. Transaction reporting may therefore prevent the collection of useful data, and respondents to the discussion paper highlighted that position reporting may provide a viable alternative to transaction reporting.

Q28. **Are there any obstacles to the collection of data on the amount of margin financing available and outstanding margin balance? Are there any alternatives to collect data on "Free credit balances", as required by the FSB? Please provide an example.**

Q29. **Are there any obstacles to the reporting of (positive or negative) cash balances in the context of margin lending?**

Q30. **Are data elements on margin financing available and outstanding balances relevant for margin loans *outside* the prime brokerage context? Please provide examples.**

Market value of short position

188. 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.

189. The FSB requires collecting data on short market value, which is a proxy for securities borrowing and forms part of the portfolio that the financing calculation is performed upon. As with cash balances, this data element can only be reported on a position basis, rather than a transaction basis. This information is already reported by prime brokers to their client as part of the end-of-day position snapshot.

Q31. **Is the short market value reported to clients at the end of the day part of the position snapshot? What is the typical format and level of granularity included in the information communicated to clients?**

Q32. **Is the data element on short market value relevant for margin loans *outside* the prime brokerage context? Please provide examples.**

4.3 Content and structure of the SFT report

4.3.1 Structure of the report

190.   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.

191.   ESMA asked in the Discussion Paper whether a similar approach should be applied in the SFTR 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.

192.   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.

193.   Two respondents suggested that the data related to the reuse of collateral should not be included in the Counterparty data. ESMA agrees with this and proposes 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 how data on reuse should be reported is discussed under Section 4.3.6.6.

194.   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.

195.   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 is proposing 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 is proposing the use of the term "margin".

196.   In summary, ESMA proposes the grouping of the data elements in four categories:

a. 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,

b. Data related to the economic terms of the loan and of the collateral, as well as the valuation of the latter.

c. Data related to the margin posted or received pertaining to cleared SFTs

d. Data related to the re-use of collateral pertaining to all SFTs

197. Furthermore, one respondent stated that the field "Tri-party agent" should be moved from the Counterparty data to the trade-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. ESMA would like to gather further opinions on this statement. Likewise, ESMA would also like to further investigate if there are any other specific fields that should be moved from the Counterparty data to the Trade-related data or vice-versa.

198. A few respondents 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 trade-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 for more information on the validation rules and the reconciliation process).

Q33. Do you agree with the proposed structure of the SFT reports? If not, how you would consider that the reporting of reuse and margin should be organised? Please provide specific examples.

Q34. What are the potential costs and benefits of reporting re-use information as a separate report and not as part of the counterparty data? Please elaborate.

Q35. What are the potential costs and benefits of reporting margin information as a separate report and not as part of the counterparty data? Please elaborate.

Q36. Are there any fields which in your view should be moved from the Counterparty to the Trade-related data or vice-versa? If so, please specify the fields clarifying why they should be moved.

Q37. Is tri-party agent expected to be the same for both counterparties in all cases? If not, please specify in which circumstances it can be different.

Q38. Do you agree with the proposed fields included in the attached Excel document? Please provide your comments in the specified column.

4.3.2 Branches

4.3.2.1 Identification of branches

199.   As explained in the Discussion Paper, the reporting obligation under the SFTR applies not only to the counterparties established in the Union including all their branches, but also to the EU branches of the third-country counterparties. 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.

200.   In the Discussion Paper, ESMA proposed that the location of the branch is reported through an ISO country code pertaining to the jurisdiction where the branch is located. In ESMA's understanding such designation would be sufficient provided that the counterparties are required to identify themselves through their LEI. The Discussion Paper also stated that the LEI ROC guidance on the LEI codes for international branches may be considered in the future.

201.   The feedback received from the respondents was not unanimous. The majority of respondents referred to the ongoing work of LEI ROC on the identification of the branches and expressed preference for using the LEI codes, rather than ISO country codes. Notwithstanding, several of those respondents noted that implementation of any interim

solution (such as country codes) would be costly, therefore, mandating the LEI for branches from the beginning is preferred. ESMA agrees with this comment and would like to clarify that it does not intend to set out any interim requirements in case the LEI for branches is not implemented sufficiently in time before the SFTR reporting start date. If the ISO country codes were required for reporting, ESMA would like to clarify that the reporting of ISO country would also fulfil the regulatory needs and that a subsequent switch to LEI codes when they become available would not be necessary.

202. Additionally, it was noted that LEI codes would allow the regulators to access the LEI reference data as well as would mitigate the risk of the counterparty populating the country code incorrectly.

203. On the other side, several other respondents noted that the ISO country codes are already commonly used. One respondent commented that LEI for branches might be costly for smaller entities.

204. Furthermore, on 11 July 2016 LEI ROC published a statement on the inclusion of data on international branches in GLEIS[17]. While the statement provides helpful information on the conditions for issuing LEIs for branches, in ESMA's view it is premature at this stage to conclude that the solution will be globally implemented sufficiently in advance of the reporting start date. This might lead to significant data aggregation and data access issues.

205. Taking into account the feedback received from the respondents and the current status of the work on LEI for branches ESMA considers that the ISO country codes would be sufficient to determine the country where the branch is located. This solution is also aligned with the approach proposed in the ITS on reporting under EMIR (for identification of the country of the other counterparty) and RTS on transaction reporting under MiFIR (for identification of country of the branch that executed a transaction).

206. Additionally, two respondents commented that the identification of the branch may not be possible in all cases. In particular, one respondent noted that many legal agreements are signed as multi-branch agreements and, therefore, the branch location might not be apparent if a firm operates a global trading book. The other respondent commented that it is not always clear for the entity whether its counterparty books the trade on the local book of the branch or on the global book. ESMA takes note of these comments, but would like to highlight that identification of branches is crucial in determining the reporting obligation

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[17] Including data on international/foreign branches in the Global LEI System, available at https://www.leiroc.org/publications/gls/roc_20160711-1.pdf

in case of a third-country entities. It is also necessary for aggregation of data by the regulators and for the correct implementation of reconciliation procedures by the trade repositories.

Q39. Do you agree with the proposal to identify the country of the branches with ISO country codes?

4.3.2.2   Reporting of trades concluded by branches

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

208.   The respondents were asked whether there are any additional scenarios that the table had not included. All the respondents to this question confirmed that the list of scenarios is comprehensive and identified no missing scenarios.

209.   However, three respondents were not sure on how to interpret the last column of the table. In this respect ESMA would like to clarify that 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

	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*
Table 3- Reporting by branches									
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
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 nor 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

210. The Discussion Paper outlined two cases where beneficiary can be different from the counterparty: trades concluded by sub-funds (in line with EMIR General Question18) and trades concluded on behalf of another entity. Respondents were asked to provide examples of other scenarios, where beneficiaries and counterparties would be different.

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[18] https://www.esma.europa.eu/sites/default/files/library/2016-539_qa_xvii_on_emir_implementation.pdf

211. 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.

212. Two further 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.

213. Considering the received comments as well as the use cases identified in the Discussion Paper, ESMA suggests maintaining the proposed approach for the identification of beneficiaries.

214. Furthermore, it should be noted that many respondents commented on the wording used in the paragraph 204 of the Discussion Paper, stating that "sub-funds", which are not identifiable by LEI, can be typically considered as beneficiaries to the SFT." The respondents noted that the sub-funds are eligible to obtain LEIs and asked for further clarification in this respect. ESMA would like to clarify that the wording used in the paragraph 204 was indeed confusing and the intended approach to identification of sub-funds would be the same as explained in the EMIR General Question 1. Accordingly, if the transaction is concluded at the level of the sub-fund, the sub-fund should be identified as the counterparty (with the 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 sub-fund as the beneficiary.

Q40. **Do you agree with the proposed approach with regards to the reporting of information on beneficiaries? If not, what other aspects need to be considered? Please elaborate.**

4.3.4 Linking of SFTs

215. The key objective of the SFTR is to increase the degree of transparency within the securities financing market. By ensuring the information each SFT is as comprehensive as reasonably possible, competent authorities can engage in richer network analysis of the structure and dynamics of the securities financing market.

216. SFTR will ensure that all SFTs are reported. However, transactions may evolve over time (e.g. being novated for clearing and subsequently cleared), requiring further separate reporting. Through clearing, a single trade (as reported) could be replaced by many other

trades, particularly if they involve clients of clearing members. In order to understand the evolution of the transaction and to ensure correct reporting, the possibility to link related reported trades needs to be explored.

217. The Discussion Paper included a proposal to link different reports related to a single centrally cleared SFT by using a common identifier populated in "transaction reference number" field. Linking different reports related to the same cleared SFT would allow the following:

   a. The identification of financial stability risks and the different roles that the counterparties play in the SFT market. 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). It would also help to identify and understand the origin of shocks in the repo market.

   b. Monitoring the evolution of transactions over time., It is relevant to track the evolution of the transaction 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. Ensuring the quality of data reported. For example, linking of the reports would also help check the data quality and whether the counterparties populate the reporting fields on clearing correctly.

218. ESMA proposed to link the reports either by a prior UTI (i.e. the UTI of the pre-novation transaction) or a transaction reference number[19] similar to the one used in EMIR to group reports which relate to the same execution.

219. The method of linking and the benefits depend on the reporting logic of cleared SFTs, i.e. whether reports of the original trade before novation are required to be provided to the trade repositories or not. Under the reporting logic proposed in the Discussion Paper, the reports of the original trade conducted on a trading venue would not be required if the trade is cleared on the same day. However, if there is a bilateral trade or a trade conducted on a trading venue, but cleared on the next day or later, the reports of an original trade would

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[19] Renamed as "report tracking number" in the Article 9 technical standards review.

have to be sent to the trade repositories and then subsequently terminated when the reports on the transactions post clearing are provided.

220. Where the counterparties are required to report the initial trade before clearing, they could provide the prior UTI of this original report in the post-clearing reports. Where the original UTIs are not required (i.e. for SFTs traded on trading venues and cleared on the same day) the needed identifier could be generated by the venue and passed onto the counterparties. The different situations of clearing and trading, respective rationale and proposed methods of linking of reports are summarised in Table 4.

Table 4- Summary of rationale and methods of linking transactions				
Time of clearing	Comment	Linking rationale	Linking method	
			Traded on trading venue	Traded outside of a trading venue
Cleared on the same day as traded	Reports of the original trade are not required for SFTs traded on trading venues, so prior-UTI remains unseen by the regulators	Identifying the different roles that counterparties play in the SFT market and ensuring data quality	Report tracking number (generated by the trading venue)	Prior-UTI
Cleared on T+1 and later	Reports of the original trade must be provided, so regulators can track the evolution of transaction over time	Monitoring the evolution of transaction over time, identifying the different roles that counterparties play in the SFT market, and ensuring data quality	Prior-UTI	Prior-UTI
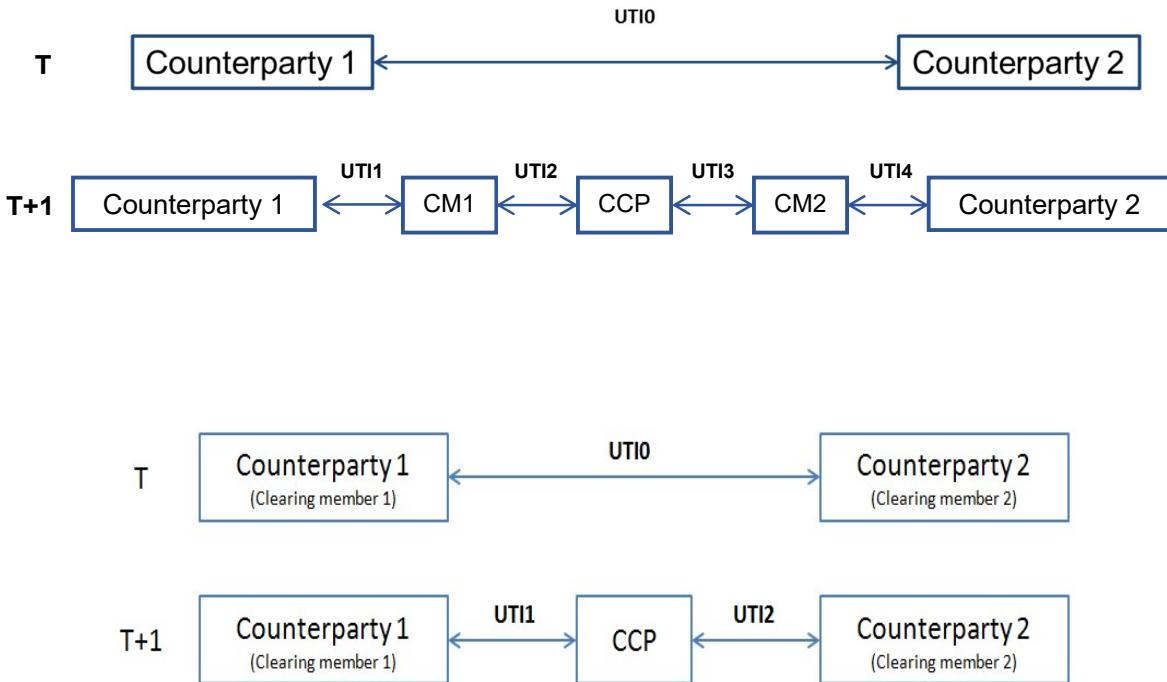
221. The feedback on the linking proposal was split. Four respondents, including the ones representing groups including CCPs, agreed with the proposal to link different legs of the same cleared SFT. A number of respondents agreed that linking had benefits as pointed out in the Discussion Paper, but noted that it would be complex to implement.

222. A number of respondents were against the proposal owing to costs and complexity, as firms (CCP and their members) would need to make changes in the infrastructure to store the identifiers and to communicate them through the chain. However, ESMA notes that the firms will have to make changes in general to prepare for the introduction of the SFTR reporting. It is therefore unclear what incremental cost of implementing this proposal would be.

223.   Some respondents were of the view that the benefits of linking of the reports were only temporary on the basis that CCPs regularly net the transactions of their clearing members. However, irrespective of netting of transactions at the CCP, the rationale provided at the Discussion Paper, i.e. identifying the roles of the counterparties in the repo market, monitoring the evaluation of the transaction over time and ensuring the quality of data reported, remains valid. ESMA also notes that the benefits of linking the reports by using a prior-UTI are recognised in the recent CPMI-IOSCO consultative report on Harmonisation of the Unique Transaction identifier[20].

224.   A number of respondents to the Discussion Paper expressed their support for the current CPMI-IOSCO work on UTI and noted that it was still under development. A few respondents also suggested waiting for the feedback on the new EMIR RTS/ITS, in particular the "Report tracking number" field and aligning with the EMIR approach. ESMA takes note of these comments and would like to confirm that it is closely monitoring the developments of the CPMI-IOSCO work and, if necessary, will align the linking proposal accordingly.

225.   A number of respondents provided general comments about UTI generation under the SFTR and requested for a clear framework defining which party generates UTIs and on the construction of identifiers. In response to this request, ESMA includes a separate section on generation of UTIs in the Consultation Paper (see section 4.3.5).

226.   Two respondents noted that the client clearing model, as described in the Discussion Paper section on linking (Table 5), was not common to all SFT markets. They suggested replacing it with a more common clearing model as described in Tables 6 and 7. ESMA agrees with this comment and notes that the linking proposal would work in both cases described. In the client clearing model the linking proposal would have the additional benefit providing a distinction between inter-dealer trades performed on behalf of clients (with dealers acting as clearing members for client trades) and inter-dealer trades performed for the dealer's own purposes, e.g. to fund a given security or to raise liquidity to mitigate a payment shock. Taking this model into account is important for the purposes of future-proofing of the SFTR reporting regime in case the market develops.

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[20] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD500.pdf

227. One respondent proposed an alternative for the CCPs to create a unique transaction ID as given in the reports towards a clearing member, and the clients could use this identifier to generate such a linking reference. However, ESMA favours adopting international standards where possible and to follow the CPMI_IOSCO proposal to the extent feasible in this case.

228. One respondent proposed to use an electronic matching platform to confirm all details of a trade with the counterparty before submission to a TR. This would provide a common ID that would then the tracked throughout the lifecycle of the trade and could be followed for both cleared and non-cleared trades. However, ESMA notes that this proposal would require mandating obligatory pre-matching of trade details, and this is not within the mandate of the SFTR.

229. Considering the feedback received and at the same time noting the benefits for the regulators and alignment with the international work in the area, ESMA would like to retain the linking proposal.

Amended linking proposal

230. However, ESMA notes the responses related to the cost of making changes to infrastructure, especially in the case of CCPs. ESMA is therefore proposing not to require

CCPs to report the Report Tracking Number field in the case of cleared transactions, i.e. the prior-UTI would be reported by counterparties and clearing members only and would not have to be a matching field. This would avoid the need to transfer the Report Tracking Number through the whole chain but would still provide an audit trail. Authorities would be able to reconstruct the linked trade without CCPs reporting the original UTI generated by the two counterparties.

231. Table 5 below illustrates how the common identifier field should be populated in the post clearing reports.

Table 5- Methods of linking transactions proposed approach				
Report Number	UTI of the trade	Reporting counterparty	Other counterparty	Common identifier (Report Tracking Number field)
1	UTI1	Client 1	CM 1	UTI0
2	UTI1	CM 1	Client1	UTI0
3	UTI2	CM 1	CCP	UTI0
4	UTI2	CCP	CM 1	-
5	UTI3	CCP	CM 2	-
6	UTI3	CM 2	CCP	UTI0
7	UTI4	CM 2	Client 2	UTI0
8	UTI4	Client 2	CM2	UTI0

Q41. **Would exempting CCPs from reporting the Report Tracking Number field would reduce the reporting burden on the industry.**

Q42. **Could you please provide information on incremental costs of implementing the proposal, taking into account that systems will have to be changed to implement the SFTR reporting regime in general?**
Linking of SFT reports alternative – relative referencing solution

232. Another alternative to avoid the transmission of the Report Tracking Number through the chain and to limit the impact on the systems and operations of the reporting institutions is a relative referencing solution. It is based on using the UTI of the previous trade in the chain of reports.

233. The counterparties to the original bilateral trade would provide their clearing members with the UTI of the bilateral trade to be included in the report of the novated trade between the counterparties and their respective clearing members as a linked UTI, thereby establishing the required link between the bilateral trade and the novated trade.

Trade Date Counterparty 1 ←———— UTI0 ————→ Counterparty 2

Trade Date + 1 Counterparty 1 ←UTI1→ CM1 ←UTI2→ CCP ←UTI3→ CM2 ←UTI4→ Counterparty 2
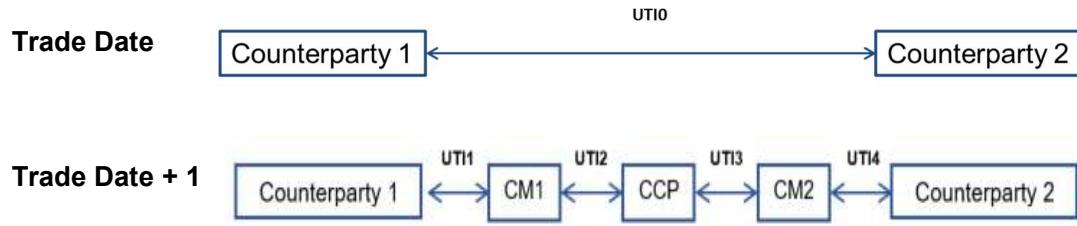
Table 6- Methods of linking transactions alternative approach				
Report	UTI of the trade	Reporting counterparty	Other counterparty	Common identifier (Report Tracking Number field)
1	UTI0	Counterparty 1	Counterparty 2	-
2	UTI0	Counterparty 2	Counterparty 1	-
3	UTI1	Counterparty 1	CM1	UTI0
4	UTI1	CM1	Counterparty 1	UTI0
5	UTI4	Counterparty 2	CM2	UTI0
6	UTI4	CM2	Counterparty 2	UTI0
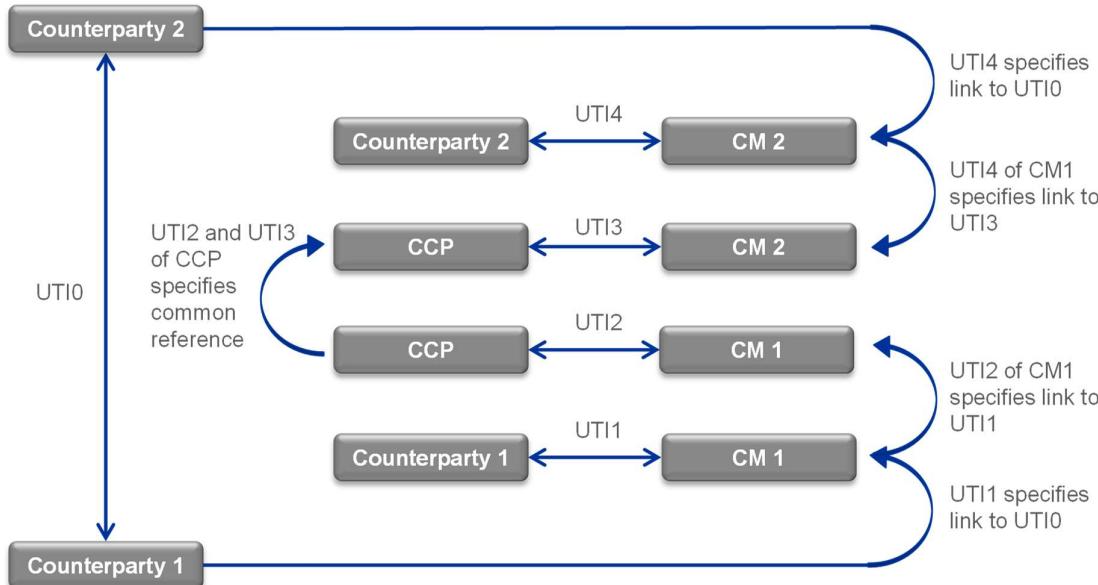
234. The clearing member would subsequently generate a trade to forward to the CCP for novation. However, the clearing member only needs to maintain the reference of the underlying trade with its counterparty in its internal system and it does not need to forward the reference to the CCP. The CCP would not need to adapt its system to store an additional reference, as the CCP would not need to report this reference. However, the CCP would need to provide a unique common identifier ("common reference", hereinafter CREF) only for the two counterpart trades that it novates, a reference mechanism that most CCPs should already have in their respective systems.

Table 7- Methods of linking transactions alternative approach				
Report	UTI of the trade	Reporting counterparty	Other counterparty	Common identifier (Report Tracking Number field)
7	UTI2	CM 1	CCP	UTI1
8	UTI2	CCP	CM 1	CREF1
9	UTI3	CM 2	CCP	UTI4
10	UTI3	CCP	CM 2	CREF1

235. Therefore, the trades under the alternative proposal would be linked as follows:

236. This alternative would allow linking of the trades within the reporting chain without requiring the transmission of the common identifier throughout the chain. However, it would be more complex for the regulators to analyse and more error-prone. Also, it would not be in line with the international work on the global UTI. Therefore, ESMA prefers to use Option 1 amended to reflect the concerns expressed by the industry in relation to the transmission of the prior-UTI throughout the chain of reports of a cleared trade.

Q43. **Could you please provide views on whether you would prefer Alternative 1 (prior-UTI) over Alternative 2 (relative referencing solution)? Please provide relative costs of implementing both proposals.**
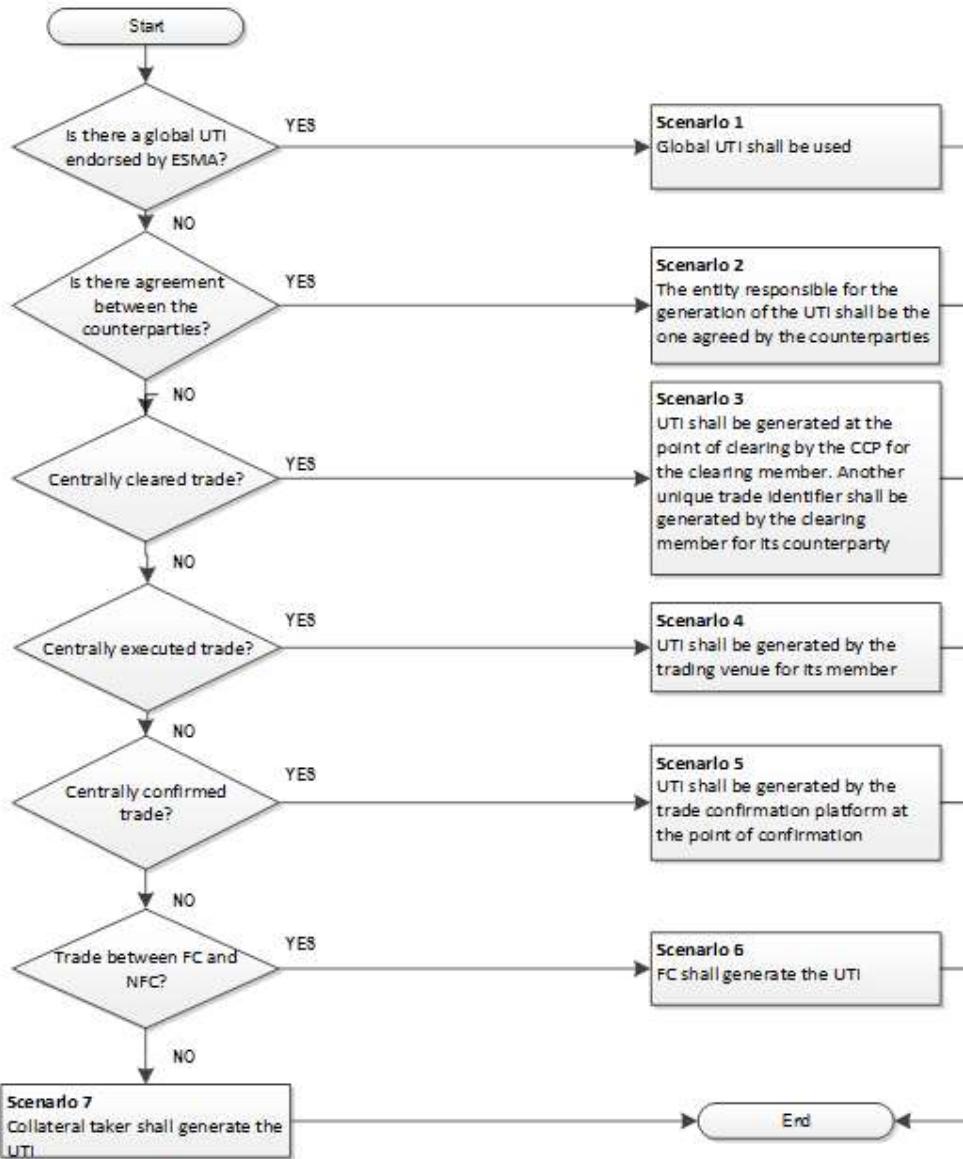
4.3.5 UTI generation

237.   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. Currently, there is no global Unique Trade Identifier for the SFT transactions that could be applied, therefore ESMA proposes to include in the technical standards specific rules prescribing which entity is responsible for the creation and transmission of the UTI.

238.   In particular, ESMA proposes to follow the UTI generation waterfall approach aligned with the one included in the revised draft ITS on reporting under Article 9 of EMIR. The following flowchart illustrates which entity shall be responsible for the generation of the UTI for an SFT transaction under different scenarios, as set out in the Article 3 of the ITS:

FIGURE 1 – UTI GENERATION FLOWCHART

UTI generation flowchart

Q44. **Do you agree with the above rules for determining the entity responsible for the generation and transmission of the UTI? If not what other aspects should be taken into account? Please elaborate.**
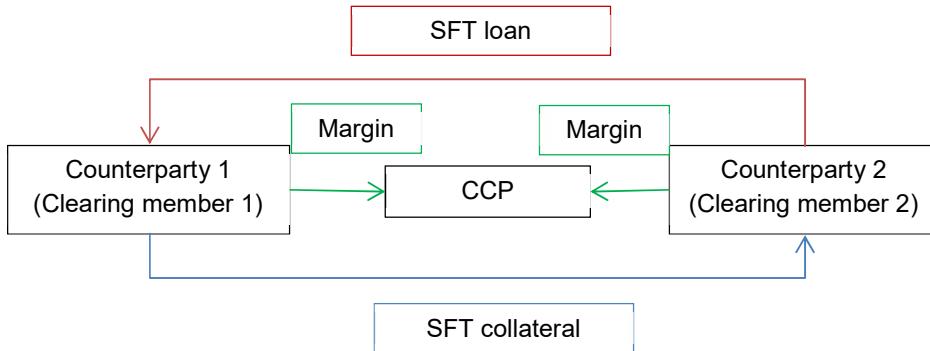
4.3.6 Collateral reporting and reporting of collateral re-use

4.3.6.1 Reporting of margins pertaining to SFTs

239. ESMA's proposals in the Discussion Paper with regards to collateral reporting included the reference to collateralisation on net exposure basis, where CCP-cleared SFTs were not excluded. The feedback received was that the CCP margins should not be considered as part of the net exposure collateralisation, because they work in a different way.

240. 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.

241. In order to be able to use the services of a CCP, both Counterparty 1 and Counterparty 2 would post margin to the CCP. The margin is composed of initial margin and variation margin[21]. The margin posted with the CCP has no direct relationship to the collateral of the SFT. It is used by the CCP to cover all 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.

242. 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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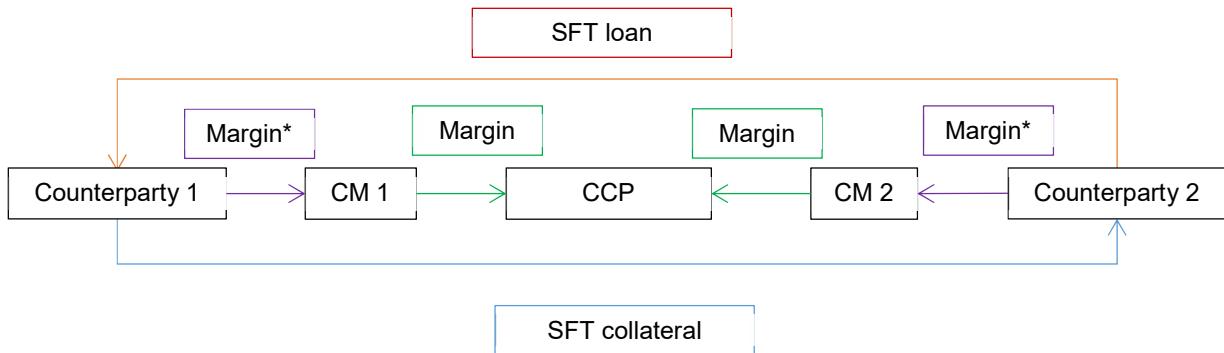
[21] There might be also excess margin, which would be the part of the collateral in excess of the required level.

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

```
                          SFT loan
  ┌──────────────────────────────────────────────────┐
  │                                                    │
  ↓          ┌──────────┐      ┌──────────┐            │
┌───────────────┐ Margin │      │ Margin │  ┌───────────────┐
│ Counterparty 1 └────────┘      └────────┘  │ Counterparty 2 │
│ (Clearing      ──────→  ┌────────┐  ←────── │ (Clearing      │
│  member 1)              │  CCP   │          │  member 2)     │
└───────────────┘        └────────┘          └───────────────┘
  │                                                    ↑
  └──────────────────────────────────────────────────┘
                       SFT collateral
```

- Counterparty 1 would report a repurchase transaction with CCP. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP. Counterparty 1 would report the SFT transaction details, consisting of the loan and the collateral. It would also report through a separate margin report the margin posted to the CCP.

- Counterparty 2 would report a repurchase transaction with CCP. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP. Counterparty 2 would report the SFT transaction details, consisting of the loan and the collateral. It would also report through a separate margin report the margin posted to the CCP.

- CCP would report a repurchase transaction with Counterparty 1 and second repurchase transaction with Counterparty 2. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP in the further dedicated reporting field that specifies the CCP. CCP would report the SFT transaction details, consisting of the loan and the collateral. It would also report 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 would 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

243. 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.

244. In order to be able to use the services of a CCP, both CM 1 and CM 2 would post margin to the CCP. The margin is composed of initial margin and variation margin[22]. 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 would report a repurchase transaction with CM 1. It would report that the trade is cleared in a dedicated reporting field and would report the LEI of its clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP of the clearing member. Counterparty 1 would report the SFT transaction details, consisting of the loan and the collateral. Counterparty 1 would also report through a separate margin report the margin that it posted to CM 1.

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[22] There might be also excess margin, which would be the part of the collateral in excess of the required level.

- CM 1 would report a repurchase transaction with Counterparty 1. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP. CM 1 would report the details of the SFT, consisting of the loan and the collateral. CM 1 would also report through a separate margin report the margin that it received from Counterparty 1.

- CM 1 would report a repurchase transaction with the CCP. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP clearing member in a further dedicated reporting field. The dedicated reporting field to identify the CCP would specify the LEI of the CCP. CM 1 would report the SFT transaction details, consisting of the loan and the collateral. CM would also report the margin it posted to the CCP.

- The CCP would report a repurchase transaction with CM 1. It would report that the trade is cleared in a dedicated reporting field and would identify itself by its LEI as the CCP in the dedicated reporting field that specifies the CCP. The e "CCP" field would be filled with the LEI of the CCP. The CCP would report the SFT details, consisting of the loan and the collateral. The CCP would also report in a separate margin report, the margin it received from CM 1.

- The trades involving Counterparty 2, Clearing Member 2 and CCP would be reported as described above for Counterparty 1, Clearing Member 1 and the CCP, respectively.

245.   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.

Q45.   **Do you agree with the logic and framework for reporting of margins for CCP-cleared SFTs? What other aspects should be taken into account? Please elaborate.**

4.3.6.2   Collateral reporting

246.   Article 4(9)(b) SFTR specifies the requirement to report the assets used as collateral, including their type, quality, and value. Furthermore, the subsequent text at the end of Article 4(9)(b) SFTR states that the draft technical standards shall take into account the

technical specificities of pools of assets and shall provide for the possibility of reporting position-level data for collateral where appropriate.

247. 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. The value of the collateral (and each of its components) should be determined in accordance with the methodology defined in International Financial Reporting Standard 13, Fair Value Measurement, adopted by the Union and referred to in the Annex to Regulation (EC) No 1126/2008[23] Changes to collateral market value would require reporting on a daily basis even when the collateral composition for an SFT or several SFTs does not change.

4.3.6.2.1 Definition of Terms for the purposes of this Consultation Paper

248. Some respondents to the Discussion Paper requested further clarity on the terminology used in describing the collateral reporting. ESMA learned from the responses that the same terms have different meanings in some markets. In order to eliminate any ambiguity of on the terminology used in the context of collateral reporting, the following definition of terms apply in this Consultation Paper:

    a. The term "collateral pool' is understood as an arrangement whereby counterparties can deposit a range of securities in a securities account that can then be used to collateralise any of a given set of current or future transactions.

    b. The terms "collateral basket" are "collateral schedule" synonyms and mean a list of securities agreed to be eligible for delivery against a given SFT. The term "collateral basket" is primarily used in the repo market. The term "collateral schedule" is primarily used in securities lending.

    c. The term "collateral portfolio" means in margin lending the portfolio in which the lender holds the assets of the borrower that the borrower uses to collateralise the margin lending transactions.

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[23] Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 320, 29.11.2008, p.1).

Q46. **Would you agree with the definition of terms? If not, please explain.**

4.3.6.2.2 Trade-based collateral allocation and collateral allocation based on net exposure

Trade-based collateral allocation

249. The Discussion Paper noted that the reporting of collateral (securities, commodities or cash) can take place at trade-level or based on the net exposure between the counterparties.

250. In a trade-based collateral allocation and reporting, the collateral can be explicitly linked to a specific loan (trade) and 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, e.g. a basket of securities. From the responses received on the Discussion Paper, ESMA notes that:

    a. Collateral generally can be reported on trade level for repo trades with the exception of any subsequent collateral allocations to cover the net repo exposure between two counterparties and the collateralisation of tri-party repos based on net exposure;

    b. The collateral can be reported on trade level for securities lending trades that are collateralised individually using cash, i.e. "cash rebate trades". The exception to this may be CCP-cleared cash rebate securities lending trades in some markets where the CCP calculates the initial cash value only on the intended settlement date.

251. Therefore, ESMA understands that the counterparties would report the collateral for repo trades on trade level (UTI). Counterparties would also report collateral on trade level for securities lending trades that are collateralised by cash. Furthermore, ESMA understands that with the exception of trades against a collateral basket both counterparties will have agreed the collateral for an SFT at the time the SFT is concluded or at the latest at the end of the day on which the SFT is concluded. For repo trades against a collateral basket, the counterparties would report the collateral allocation as soon as it is known, but at the latest at the end of the value date + 1.

Q47. **Are the cases for which collateral can be reported on trade level accurately described? If not, please explain.**

Q48. **In addition to the exceptions listed above, when would the collateral for a repo trade that does not involve a collateral basket not be known by the reporting deadline of end of T + 1?**

Q49. **Could the counterparties to a CCP-cleared cash rebate securities lending trade report an estimated value for the cash collateral in the markets in which the CCP calculates the initial cash value on the intended settlement date? If not, please explain.**

Collateral allocation based on net exposure

252.   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). From the responses received on the Discussion Paper, ESMA notes that:

   a. 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.

   b. Collateralisation based on the net exposure takes place for open repo trades between two counterparties and for some types of triparty repos.

   c. Collateralisation based on the net exposure takes place for open securities lending trades collateralised through securities.

   d. The counterparties in an SFT do not include their trades cleared through a central counterparty (CCP) into the calculation of their bilateral net exposure, as the collateralisation of these trades takes place through the initial margin and variation margin that the CCP requires the counterparties to provide.

253.   ESMA understands that the counterparties would report the collateral separately from the underlying trades when reporting collateral for net exposures. This requires a mechanism to link the already reported underlying trades to subsequent collateral reports (e.g. collateral updates for the collateral allocation and collateral substitution).

Q50. **Are the cases for which collateral would be reported on the basis of the net exposure accurately described? If not, please explain.**

Q51. **Is the understanding of ESMA correct that CCP-cleared trades are excluded from the calculation of net exposures between two counterparties? If not, please explain.**

254. Furthermore, collateralisation for margin loans takes place based on the balance of the outstanding loan(s) and the reporting counterparties could report the assets of the collateral portfolio in conjunction with the balance of the outstanding loan(s).

Q52. **Is the assumption correct that the counterparties can report the assets available for collateralisation in the collateral portfolio for margin lending with the balance of the outstanding loan? If not, please explain.**

Table 8 - 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[24] not involving collateral basket	• One-to-one • One-to-many[25]	• Known at end of trade date for bilateral trade without tri-party collateral management • Specific collateral allocation on ISIN level known at the latest at the end of value date + 1 (intended settlement date of opening leg) for bilateral trade with tri-party collateral management
Repo trade involving collateral basket	• One-to-one[26] • One-to-many	• Collateral pool or collateral basket known at the end of trade date • Specific collateral allocation on ISIN level known at the latest at end of value date (intended settlement date of opening leg)

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[24] This scenario also covers buy/sell-backs based on ESMA's understanding.
[25] 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.
[26] 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 8 - 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**
Securities lending not involving collateral basket)	• One-to-one • One-to-many • Many-to-one • Many-to-many[23]	• 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)
Securities lending involving collateral basket	• One-to-one[25] • One-to-many • Many-to-one • Many-to-many	• Collateral pool or collateral basket known at the end of trade date • Specific collateral allocation on ISIN level known at the latest at the end of value date (intended settlement date of opening leg)+1
Net exposure for repo trades	• One-to-one[27] • One-to-many[28] • Many-to-one • Many-to-many	• Known at the end of trade date, which would also be the end of value date (intended settlement date of opening leg) owing to same-day settlement
Margin lending	• One-to-many	• Known at the end of trade date

4.3.6.2.1 Definition of collateral reporting elements

255.   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.

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[27] 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.
[28] 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.

Table 9 - Collateral Reporting Elements
SFT Collateral Reporting Elements
Cash Collateral Element
Securities Collateral Element
Commodities Collateral Element

Cash Collateral Element

256. 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 Discussion Paper proposed limiting the use of this element to securities lending trades that are collateralised against cash. Some respondents highlighted that cash could also be used to a very limited extent as collateral in the case of tri-party repos as a temporary measure when non-cash collateral is not available. However, the scenarios in which this would happen and would require reporting at the end of day were not adequately explained.

Q53. **Are you aware of any scenarios that would require at the end of day the reporting of cash not only as principal amount, but also as cash collateral for repos? If yes, please describe.**

257. The Discussion Paper raised the question whether mainly securities lending would require the reporting of cash as collateral. ESMA would like to clarify that the question pertained to whether repos and margin lending would require the reporting of cash as in a dedicated collateral element. The current proposal for the reporting fields foresees that the cash leg of the repo is reported in the field "Principal amount" and not in a separate Cash Collateral Element. The security (securities) is (are) reported in the Securities Collateral Element.

258. ESMA has determined from the responses to the Discussion Paper, the SFTs may be collateralised in several currencies. Therefore, the reporting would foresee a repetitive element for the reporting of cash collateral.

Table 10 - Cash Collateral Element
Cash Collateral Element
Collateral Currency
Collateral Amount

Securities Collateral Element

259. 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.

260. In response to the question concerning the scope of fields to be reported for securities as collateral, all respondents highlighted that the requested information is too extensive. Respondents also stated that trade repositories and authorities should derive the values for the fields for reporting of attributes for the security from the ISIN. Furthermore, some respondents commented that providing asset categories and collateral market values should suffice. In response, ESMA would 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.

261. 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.

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

Table 11 - Securities Collateral Element
Securities Collateral Element
ISIN
Currency or Unit of Quotation
Quantity or Nominal Amount
Price Currency
Price Per Unit

Table 11 - Securities Collateral Element
Collateral Market Value
Collateral Quality
Haircut or Margin
Issuer LEI
Jurisdiction of Issuer
Maturity Date
Availability of Collateral Re-use

Commodities Collateral Element

263.   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 12 - Commodities Collateral element
Commodities Collateral Element
Base product
Sub-product
Further sub-product
Currency or Unit of Quotation
Quantity
Price Currency
Price Per Unit
Collateral Market Value
Collateral Quality
Haircut or Margin
Availability of Collateral Re-use

264. 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.

4.3.6.2.2 Reporting and linking of trade and collateral data

265. 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.
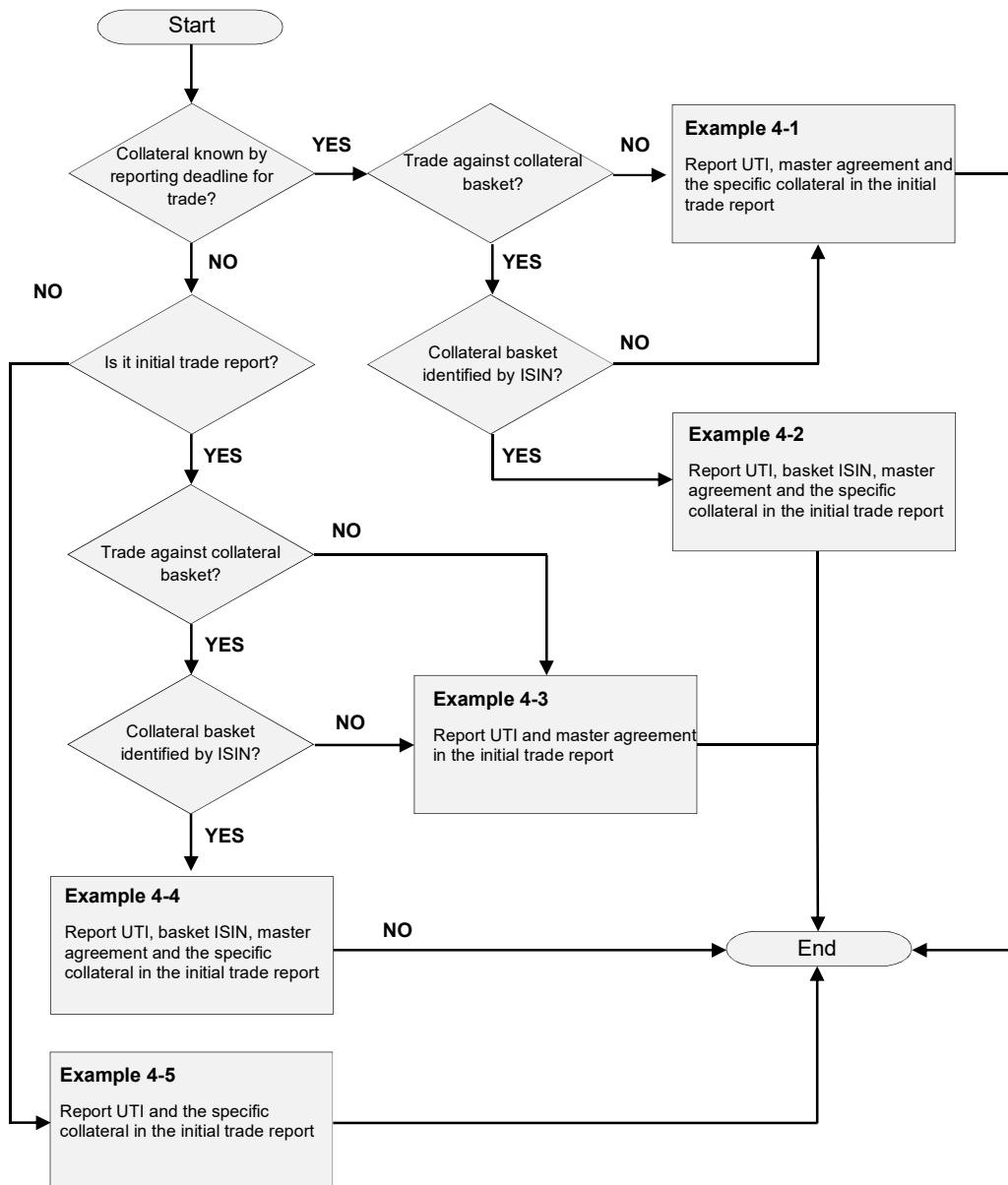
266. In those situations, detailed in Figure 2, where the collateral is not reported by the reporting deadline, the counterparties should report it at the earliest opportunity, but no later than ~~one working day following~~ the value date of the SFT. In that case, they are not deemed to have completed their reporting obligation under Article 4 SFTR until they provide the relevant information on collateral.

Trade-based collateral reporting

267. In the trade-based collateral reporting, collateral can be reported in the original trade report or as a subsequent   update with action type "Modification of business terms" 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

268. 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 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 13- 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

269.   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 14- 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
Action Type: New

270. 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.

Table 15 - 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

271. 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 16 - 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

272. 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 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 INVOLVES COLLATERAL BASKET IDENTIFIED BY ISIN
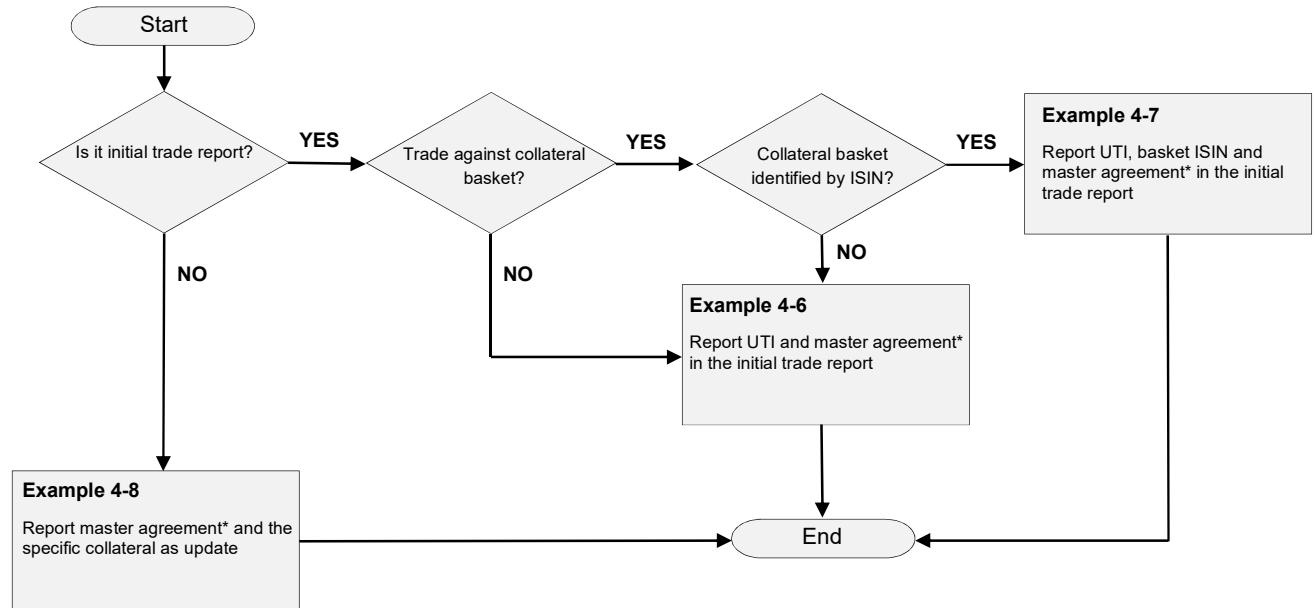
Table 17- Reporting of collateral and linking to initial report in the case of trade-based collateral reporting when the collateral allocation is not known by reporting deadline and trade does not involve collateral basket identified by ISIN
Reporting Counterparty: LEI1
Other Counterparty:LEI2
UTI: 45678
Master agreement: GMRA
Action Type: New
Reporting Counterparty: LEI1
Other Counterparty:LEI2
UTI: 45678
Master agreement: GMRA
Securities collateral element: ISIN 1
Action Type: Modification of business terms

Collateral reporting based on net exposures

273.   The subsequent flowchart illustrates the algorithm for reporting collateral for the case when collateralisation takes pace based on net exposures. This case does not refer to the reporting of CCP margin which is discussed under Section 4.3.6.1.

FIGURE 3 –ALGORITHM FOR COLLATERAL REPORTING BASED ON NET EXPOSURES

Reporting for collateralisation based on net exposures

*Note to Figure 3: Master agreement is used as a linking element for SFTs collateralised at net exposure basis.

274. In the Discussion Paper, ESMA proposed the use of a proprietary identifier to uniquely identify collateral baskets for which no ISIN is available. Several respondents stated that the linking between the trades and collateral should take place only based on the LEIs of the counterparties with one respondent highlighting that the type of legal agreement would also be necessary to identify which set of collateral pertains to which set of trades. ESMA considers the proposal to link trades with collateral for SFTs using the LEIs of the counterparties and the type of master agreement feasible 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.

275. When collateralisation for an SFT takes place based on the net exposure, 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. Consequently, the proposal is to link the collateral reported for a net exposure to the underlying trades using the LEIs of the counterparties to the SFT and the master agreement.

276.   When reporting the initial trade that is collateralised based on the net exposure and does not involve a collateral basket that is identified by an ISIN, the original trade report would specify the master agreement, but would 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 18- 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
Action Type: New

277.   When reporting the initial trade that is collateralised based on the net exposure and involves a collateral basket that is identified by an ISIN, the original trade report would specify the master agreement 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 19- 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
Action Type: New
Collateral Basket Identifier: ISIN A

278. When reporting the explicit collateral allocation for a net exposure, the collateral update would specify the LEIs of the counterparties, master agreement and the specific collateral allocation so that the collateral update can be linked to the already reported SFTs (see Example 4-8).

Table 20- 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
Master agreement: MSLA
UTI: 45678
Action Type: New
Reporting Counterparty: LEI1
Other Counterparty:LEI2
Master agreement: MSLA
UTI: 12345
Action Type: New
Reporting Counterparty: LEI1
Other Counterparty:LEI2
Master agreement: MSLA
Securities collateral element: ISIN 1, ISIN2, ISIN 3, ISIN 4, ...ISIN 100
Action Type: Modification of business terms

279. When the code list for the master agreement does not specify a valid code for the underlying master agreement, then reporting counterparties would need to specify a bilaterally agreed 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.

Q54. **Would you foresee any specific challenges in implementing the proposed logic for linking? If yes, please explain.**

Q55. **In which case would counterparties need to provide a bilaterally agreed unique code for linking trades to collateral? Please explain.**

Q56. **Is there a case where more than one bespoke bilateral agreement is concluded between two counterparties?**

Q57. **Is it possible, for a pair of counterparties to have more than one master agreement or more than one bespoke agreement per SFT type? In these cases, please specify, how these agreements are identified between the counterparties? Please provide examples**.

4.3.6.3   Special case of commodities collateral and the use of ISIN

280. 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). The idiosyncrasy of the SFTs involving commodities is described in section 4.2.4.4

4.3.6.4   Special case of margin lending

281. Similarly to repos, margin loans are a form of secured lending where the lender (i.e. buyer of the collateral) 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. Haircuts or margin requirements take place at portfolio level, rather than the individual security level.

282. In the context of prime brokerage margin lending, a financial institution will borrow money from the prime broker that conducts other transactions on its behalf (e.g. repos, derivatives, etc.). Some of the assets held by the prime brokerage firm (or collateral received from other transactions) are used as collateral to secure the margin loan.

283. The exposure of a prime broker from margin lending is collateralised by the securities that the prime broker holds in custody for this purpose. The prime broker does not allocate the specific collateral from the collateral portfolio based on the amount of the exposure. Therefore, this would predicate that when at least one margin loan is open between a borrower and a prime broker, 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 14 contains all the additional fields that are considered in the case of margin lending

Table 21 - Margin Lending Collateral Element
Margin lending collateral element
Loan-To-Value Ratio
Funding sources
Currency
Amount

284. Prime brokers dispose of complete information about the assets held in their clients' accounts. Therefore, single-security reporting at ISIN level is technically possible, although the very large volume of information may create challenges in terms of data analysis. One possible alternative would be for counterparties to report outstanding balances on a portfolio basis, e.g. at asset class level.

Q58. **How costly would it be for your firm to report individual securities? If possible, please provide a quantitative estimation of the costs.**

Q59. **Would the reporting of outstanding balances by asset class facilitate reporting? How costly would it be for your firm to develop and implement such a reporting? If possible, please provide a quantitative estimation.**

285. Respondents to the Discussion Paper indicated that the reporting of funding sources for specific transactions would not be possible for prime brokerage margin lending. This is mainly because margin lending takes place against a pool or portfolio of fungible securities that comingles prime broker assets and collateral eligible for reuse from multiple transactions and counterparties. The funding sources of margin lending are not linked to specific transactions. Funds may come from a variety of transactions, including repos, cash collateral from securities lending, proceeds from customer or broker short sales, unsecured borrowing and other sources (including liabilities subject to immediate cash payment).

286. ESMA would seek to collect position-level data (as a percentage of the total) on funding sources of the collateral portfolio for each prime broker, across counterparties. Where possible, the lender is to provide information regarding the specific sources used and their respective amounts (or at the minimum as pro-rata of the total). ESMA acknowledges that lenders might not be able to determine accurately the specific funding sources attributed

to each loan. There are also potential aggregation issues related to the methodologies to identify funding sources

Q60. Are there other obstacles to collecting position-level data on funding sources for each prime broker? If this is the case, please provide an example, and whether there is a viable alternative.

Q61. What type of information or guidance would be required in order for funding sources to be reported consistently across all reporting counterparties?

Q62. Can data elements on funding sources be reported for margin loans *outside* the prime brokerage context? Please provide examples.

287. Lastly, the total value of collateral used to secure margin loans will vary with the market value of these securities. Prime brokers monitor changes in collateral value using different portfolio leverage ratios. The amount of margin financing available to the client is calculated on the basis of this ratio, and other factors. Although the portfolio leverage ratio will encompass other transactions, it is therefore relevant to collect data on the definition and formula used to calculate the ratio, the current leverage ratio of the portfolio, and existing limits or potential thresholds that would trigger margin calls or any other action by the prime broker.

Q63. How are portfolio leverage ratios calculated? Please provide an example of the formulas typically used.

4.3.6.5   Distinguishable assets

288. 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.

289. 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 4.3.6.6.

4.3.6.6   Collateral Re-use

290. The SFT regulation defines re-use 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".

291. That 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). The SFT regulation foresees the need to report collateral re-use in cases where the collateral is distinguishable from other assets and it is essential that it can be linked to the SFTs. One respondent noted that it is possible when underlying assets have been pledged, rather than had their title transferred. No other respondents gave any clear examples. The broad majority of the responses explained that re-use cannot be defined at transaction level, however re-use can be excluded at transaction level depending on the counterparty of the SFT or type of deal (see above).

292. 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 reporting perspective however is that this information is not part of the common data of the collateral, but it is rather individual for the counterparty which is re-using collateral.

293. The reporting of re-use was considered complex and potentially difficult to implement, thereby clear guidance was requested and shall be provided about how it should be implemented.

294. Among the received answers the broadly shared view is that, considering the fungible nature of securities and the collateral management practice at pool level, re-used securities cannot be linked to SFT. Collateral reuse can only be calculated at entity (collateral taker) and ISIN level. Furthermore, it was mentioned that only the collateral taker should report on re-use as confidentiality issues were raised about providing this information to the collateral giver.

295. In specific cases re-use can be fully excluded based on the involved counterparties such as UCITS and other regulated investment funds or based on the type of deals. For example, from an agent lender perspective, when collateral is held in an omnibus securities account for the benefit of the relevant lending clients and the client contractually agreed, the agent lender will merely hold the collateral on the client's behalf.

296. Arguments were brought forward to exclude CCPs from re-use reporting or always report them as 100% re-use as CCP immediately transfer the collateral and thereby any resulting exposure from one counterpart to another so that no net position remains.

Considering the fact that in the clearing process CCP are transmitting the overall collateral from one counterparty to the other and are not keeping any outstanding position, CCP are required to only report re-use for non-cleared transactions e.g. treasury transactions.

297.   With regards to the calculation of collateral reuse for a given SFT, the respondents mentioned as possible alternatives the third formula proposed by the FSB in its consultation about re-use, which is aligned to the opinion expressed by most that re-use can only be established at ISIN level. Aligning the re-use reporting under SFTR to the FSB requirements was a view shared by several respondents.

298.   Using the re-use calculated at ISIN and collateral taker level to apply it at SFT level was deemed to create double-counting issues. However, the feasibility of a calculation at ISIN level was broadly supported if it occurs in a separate reporting.

299.   The re-use calculation by the collateral receiver appears feasible and option 3 of the FSB paper was mentioned. The re-use measurement at counterparty level was however not considered possible especially for some US entities. Indeed, the collateral is pooled before being re-used and therefore while re-use can be excluded for certain SFT, when re-use is allowed, it might not be possible to trace it back neither to the individual transaction nor to a given counterparty.

300.   The respondents also suggested the collection of reuse data as part of a separate periodical reporting process, not the daily trade reporting framework. Nevertheless, in order to ensure the achievement of the objectives of SFTR, ESMA understands that reuse would be reported by each entity that has entered into an SFT, as per the formula included in paragraph 304. The reporting of collateral re-use will be made with the same frequency as the collateral data, as the level of reuse would vary in similar fashion. The data on reuse however would not be reconciled since it is individual data for each entity.

301.   With regards to transactions in which cash is used as collateral for securities lending and in alignment with the FSB reporting elements, reporting parties shall collect the data about the re-investment. This information will be useful to assess the rebate rate of a given transactions and fulfil the FSB reporting obligations.

302.   ESMA will be following all the relevant developments at FSB level with regards to re-use of cash and non-cash collateral and will assess their application in the SFTR reporting framework.

Data elements on collateral re-use

303. Although the data elements are discussed in this section, for the purposes of reporting, the information on re-use, except the one referring to availability for re-use which stems from the type of collateral arrangement, will be included in a specific table dedicated to it.

Table 22. Re-used Collateral
Re-used 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

304. 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 is proposed for the re-use. The scope of collateral re-use being measured is restricted to collateral posted or received and subsequently re-used in SFTs and it will be reported per each ISIN:

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

where $collateral_{ij}^{received,eligible\_for\_reuse}$ 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.[29]

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[29] Own assets are not included in the data elements required by the global securities financing data standards.

305. It is envisaged that 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.

306. With regards to the reinvestment of cash collateral, the FSB[30] and ESRB[31] 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 associated with cash collateral reinvestment practices, ESMA is considering gathering data elements relating to the type of term and maturity of cash collateral reinvestment.

Q64. **What are the potential costs of providing the re-use data as outlined in this section? Are there other options to link collateral that is re-used to a given SFT or counterparty? Please document the potential issues. Please elaborate.**

Q65. **Would it be easier to report collateral re-use in a separate message as proposed or, it will be better repeating the information as part of the counterparty data?**

Q66. **Would the effort of reporting re-use on a weekly or monthly basis reduce significantly the costs?**

Q67. **Are there cash re-investment programmes for agent lenders acting as principal?**

Q68. **Do you agree that the term type and the way maturity is measured (e.g. weighted average maturity) are appropriate elements for the purpose of monitoring potential liquidity risks from maturity mismatch between the securities loan and the reinvestment of cash collateral? Are there other elements you believe ESMA should consider collecting? Do you see any obstacles to the reporting of these elements, or their analysis? Please explain.**

Q69. **What is the methodology your firm uses to compute the weighted-average life and maturity of cash collateral portfolios? Do you expect this methodology to vary significantly across firms?**

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[30] FSB (2013), Policy framework for addressing shadow banking risks in securities lending and repos.
[31] ESRB (2014), Securities financing transactions and the (re)use of collateral in Europe.

4.3.6.7 Availability for re-use

307. The SFT regulation also foresees the need to report "whether the collateral is available for re-use" which is what the reporting element "Availability of re-use" would provide based on a boolean value (Yes/No).

308. 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. Bilateral collateral agreements could though differ and margin lending would also only allow the re-use of some of the securities within the underlying collateral portfolio.

309. For the reporting of this data a simple flag whether re-use is possible was suggested at transaction level. The latest it could be reported is the value date. + 1

310. While GMRA and GSLA allow re-use, margin lending is based on bespoke agreements which may or may not allow re-use (re-hypothecation). However, also for the first two types of SFT an automated definition of re-usability 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 proposes to keep a data element to identify the availability for re-use of the collateral provided.

Q70. Do you agree with the proposed approach? What other aspects need to be taken into account? Pleas elaborate.

4.3.7 Clearing information

311. In the Discussion Paper, 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 as a result of central clearing and the SFTs that are entered into by a CCP as part of its treasury operations.

  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. **CCP 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.

312. Two respondents asked to clarify the mechanism to distinguish between cleared transactions and 'CCP as user' transactions (i.e. transactions where the CCP is investing its own capital or the cash collateral deposited by a clearing member). In response to this, ESMA would like to clarify that such a distinction will be possible by using the field "Cleared". In particular, 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). The section on SFT reporting scenarios further explained how relevant fields should be populated in various cases.

313. Two respondents expressed their concerns about the potential duplication of reporting and regulation implied in the Discussion Paper section on clearing fields as they understood that the information requested was only necessary for CCP supervisors and was already accessible under EMIR. ESMA would like to note that the information on

clearing is not only relevant from the perspective of CCP supervisors, but also from the perspective of broader financial stability analysis and the supervisors of the SFT counterparties.

314. As indicated in the Discussion Paper, all 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).

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

4.3.8 Settlement data

316. In the Discussion Paper, ESMA proposed to report three settlement related fields:

    a. Place of settlement field to capture the final place of settlement of an SFT, i.e. either a CSD (covering either an issuer or investor CSD where the SFT settles) or a settlement internaliser if an SFT settles outside of the books of a CSD.

b. Central Securities Depository (CSD) field, which is counterparty specific and is intended to capture deliverer's CSD where the securities sold are held before settlement (in the seller's report) and receiver's CSD where the securities will be held after settlement (in the buyer's report). This field is intended to capture information on SFTs settling through CSD links and could therefore be different for both counterparties and also different from the place of settlement.

c. CSD participant or indirect participant[32] field to capture a CSD participant that settles the transaction on behalf of the deliverer of securities (for the counterparty that delivers securities) or on behalf of the receiver of securities (for the counterparty that received securities). This field is generally intended to capture the custodian of the SFT counterparty.

317. ESMA noted in the Discussion Paper 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.

318. Four respondents supported the proposal to report settlement fields. However, the majority of respondents were against including these fields in the SFTR technical standards. Some of those respondents that were against the proposal agreed that, in principle, settlement information could help the regulators to monitor risks to financial stability. However, they argued that the cost and complexity of such approach were not proportionate to its benefits and that this information was not the primary focus of the SFTR.

319. The main arguments presented against the inclusion of settlement fields were as follows:

a. Information would be burdensome and costly to report as it would have to be obtained from back office systems. Most respondents noted that this

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[32]As defined under Directive 98/26/EC.

information would be unavailable by the reporting and could be provided after settlement only. A few respondents also stated that the information would be difficult to report in case of multiple securities being part of the same SFT, where the loan or collateral are settled across multiple infrastructures.

b. Counterparties often do not know what the final place of settlement is and whether the transaction has been internalised

c. The fields are not required by the FSB

d. Relevant information on settlement is already covered in the CSDR, which is more appropriate for the purpose of monitoring risks by CSDs, as CSDR encompasses all settlement activity.

e. A few respondents (including CSDs) also argued against the rationale presented in the Discussion Paper and doubted that the information would provide significant insights into financial stability risks related to SFTs. In particular, they argued that CSDs did not exacerbate systemic risk but contributed to its mitigation. They were also against the statement that the occurrence of settlement of numerous SFTs in a given CSD would allow the analysis of risks to a counterparty related with a failure of a CSD, as this, in their view, was only relevant in the case of (I)CSDs which operate with a banking licence. These respondents were of the view that relevant risks are addressed within the CSDR.

320. One association proposed to limit settlement information to "participant or indirect participant" field as this information was available to counterparties. This respondent proposed to rename the field to "settlement agent" as defined in the Settlement Finality Directive[33] to avoid uncertainty what – direct or indirect participant – should be reported under this field.

321. ESMA acknowledges that the Central Securities Depositories Regulation (CSDR) will provide a lot of information to the competent authorities of the CSDs (e.g. as part of CSD record-keeping requirements). Under the CSDR, the competent authorities will also start

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[33] 'settlement agent' shall mean 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.

receiving quarterly aggregated data on internalised securities transactions for the first time. While ESMA notes that the CSDR data will not be the same level of granularity as transaction-level reporting under the SFTR and would not provide the information from the perspective of the SFT counterparties and their supervisors, it is of the view that the settlement information is currently not the primary focus of the SFTR reporting.

322. In addition to this, ESMA takes into account the comments made by the counterparties about the complexity of reporting, especially the fact that settlement information is not always easily known to the counterparties.

323. All things considered, ESMA suggests limiting settlement information to "CSD participant or indirect participant" field. This field would provide information on 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. ESMA would like to clarify that the counterparties will be required to report the first entity in the custody chain. 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 "CSD participant or indirect participant" field. In response to the questions from the Discussion Paper respondents, ESMA would like to clarify that this field is required in all cases, even if the SFT settles outside of the CSD.

Q71. **Do you agree with the proposed approach? Please elaborate.**

4.3.9 Master agreements

324. In the Discussion Paper ESMA stated that it intends to gather information on the master agreements as from a SFTR perspective this information is expected to enable the authorities

   a. to 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

   b. to 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.

325. Some respondents to the Discussion Paper suggested moving these fields from the common to the counterparty data section of the Tables of fields. Like under EMIR, information about Master Agreement is a common data field as both counterparties should know and agree on what is the legal framework of their contract.

326. Almost all respondents agreed that the number of initially required data elements, four, goes beyond the EMIR requirements and that they are not useful to achieve the stated supervisory objectives: stating the name of the master agreement would be sufficient to achieve the required supervisory objectives. Other requested information might pose a serious problem, since the requested data are not part of the trade data.

327. Some respondents mentioned that the required Master Agreement information would require substantial investment by firms to enable the electronic capture of terms that are documented in what may be bespoke annexes and attach these to individual trades. To address these concerns, ESMA would propose to delete two fields on master agreements that were proposed in the Discussion paper – Applicable annexes to the master agreement and Bilateral amendments.

328. ESMA suggests 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 4.3.6.2.2, ESMA intends to include a closed list of acceptable values for that field plus an additional freetext field where only bespoke agreements would be identified.

329. A third field would specify the version of a master agreement. The information on the version of a master agreement is 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).

Q72. **Do you agree with the proposed approach with regards to reporting of master agreements? What other aspects need to be considered? Please elaborate.**

4.3.10 Method of trading

330. The Discussion Paper suggested requiring participants to report the method used to execute individual SFTs. The methods proposed were i) telephone; ii) automated trading systems and iii) automatic trading systems.

331. ESMA notes that the majority of respondents do not foresee any problems with collecting these data. However, some of them have suggested it would be more cost efficient to collect it using a periodic market-wide survey.

332. Considering the feedback, ESMA proposes to delete the requirement to report this information in order to reduce the burden on reporting entities.

Q73. **Do you agree with the proposed approach with regards to reporting of method of trading? What other aspects need to be considered? Please elaborate.**

4.3.11 Indemnification in the context of securities lending

333. Following the international development with regards to the provision of certain types of guarantees to the lenders of securities, ESMA is willing to consult on the suitability of such information under SFTR.

334. In a Consultative document on "Proposed policy recommendations to address structural vulnerabilities from asset management activities", the FSB seeks to address residual financial stability risks from securities lending activities that are not addressed elsewhere in the FSB recommendations. The FSB highlights that a gap remains with respect to the treatment of agent lender indemnities, and recommend the collection of relevant information and data through SFT data collection in order to monitor the potential risks posed by existing indemnification practices. In this context, a recent survey suggests that in the US indemnification of securities loans is widespread[34].

335. ESMA is also aware that information on potential guarantees or indemnifications is not usually disclosed to both sides of the SFT, but only to the lender. In order to seek maximum alignment with the FSB and in order to inform future discussions in this area, ESMA considers including additional elements in the SFTR Table of Fields.

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[34] Office of Financial Research (2016), "Securities Lending Data Collection Pilot Project" https://financialresearch.gov/data/securities-lending-data-collection-project/

Q74. In your view, what information on the nature of the indemnification (guarantee of the value, replacement of the securities, etc.), relevant for the monitoring of financial stability in relation to indemnifications could be reported? What type of data would be reported for each of the suggested elements reported e.g. values, percentages, other? Please elaborate.

5 Transparency and availability of data

5.1 Operational standards for data collection

336. 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 in paragraph 59. 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.

337. 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

338. In the Discussion Paper, 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

339. 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.

340. With regards to the authentication of participants, ESMA proposed 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.

341. For the purposes of schema validation, ESMA proposed 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[35]. ESMA specified that the schema validation will not include business rules such as content dependencies between fields. Finally, ESMA also proposed 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.

342. 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 proposes 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.

343. In terms of authorisation / permission of the report submitting entities, ESMA proposed 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

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[35] 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.

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 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.

344. Furthermore, ESMA indicated that a TR should send a specific response message for a reporting item that has failed authorisation to the report submitting entity. This proposal was widely commented. Some respondents adduced that performing such verification by TRs would result in high due diligence costs. Some others challenged the implementation of the authorisation / permission validation 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 agrees with removing the requirement for authorisation / permission in those cases where one of the counterparties is exempted from reporting. ESMA considers the capability of TRs to ensure that they process only 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.

345. To ensure logical integrity of the data, ESMA proposed 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[36]. 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.

346. Finally, ESMA proposed to establish business validation rules for the submitted reporting data in addition to the xml schema validations. ESMA proposed that the content

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[36] 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.

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.

347.   ESMA sought also some feedback on whether the lack of compliance with content validations should give rise to automatic rejection or to warning notification to the report submitting entity. The respondents indicated their preference for outright rejection, rather than warning notification and one of the reasons commented was the greater legal certainty for both the TR and the report submitting entity. ESMA will draft the technical standards accordingly.

Q75.   Do you agree with the proposed structure of the validation rules? If not, what other aspects should be taken into account. Please elaborate.

5.1.2   Reconciliation of data

5.1.2.1   Scope of the reconciliation process

348.   As part of the procedures for collection of data, ESMA proposed 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.

349. The respondents 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 proposes 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.

350. In addition, ESMA also proposes to flag the cancelled trades, i.e. those where the counterparties have initially submitted the SFT by mistake.

Q76. **Do you agree with the proposed scope of the reconciliation process? If not, what other aspects should be taken into account. Please elaborate.**

5.1.2.2 Framework of the reconciliation process

351. 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, the Discussion Paper states 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.

352.   The establishment of 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.

353.   Some respondents 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 proposes that the reconciliation of loan and collateral data takes place separately following each of the stages described in paragraph 353. 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.

354.   Furthermore, in order to ensure comparability of data and smooth functioning of the reconciliation process, ESMA proposes 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.

Q77.   **Do you consider that the proposed framework for collateral reconciliation process should take place in parallel with the reconciliation of the loan data? If not, what other aspects should be taken into account. Please elaborate.**

355.   The Discussion Paper explained 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, on the basis of 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.

356. The respondents to the Discussion Paper agreed with the proposed logic and have stressed that having a robust framework for UTI and a mandated use of LEI is essential to ensuring successful reconciliations. 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.

357. 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 proposes the use of an ISO 20022 XSD containing a subset of all the reportable fields.

358. 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 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.

359. ESMA also proposed that there should be a confirmation of common 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.

360. 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 348, 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 proposes that the inter-TR stage of the reconciliation process should be terminated by 18.00 UTC on each day of the TARGET2 calendar. Following its completion, ESMA would expect that the TRs provide the relevant response, as described in section 5.1.3, to the report submitting entities and where appropriate the reporting counterparties or entities responsible for reporting and to include this information also in the report generated to authorities.

Q78. **Do you agree with the use of ISO 20022 for the purposes of ensuring common format and common encoding of files exchanged between TRs during the inter-TR reconciliation process? If not, what other common standard would you propose?**

Q79. **Do you agree with standardising the timeline for finalisation of the inter-TR reconciliation process? Do you agree with the proposed timeline for finalisation of the inter-TR reconciliation process? If not, what would be a most appropriate timeline? What other aspects should be taken into account? Please elaborate.**

5.1.2.3 Data elements to be compared during the reconciliation process

361. In the Discussion Paper, 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) SFTR and those other data elements that are subject to data collection by FSB, should be reconciled. Most of the respondents 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, proposes to exclude the freetext fields from matching and proposes that only specific fields which are detailed in paragraph 364 would be reconciled.

362. Furthermore, some respondents proposed that a staged approach is put in place and only very few "must match" fields are chosen, while the list is extended gradually. ESMA believes that taking together the effect of the rule on exclusion of terminated trades and establishing a close set of fields will bring the efficiency to the process while ensuring sufficient level of data quality.

363. Additionally, ESMA also considered that certain data fields might not be fully matched and proposed that some degree of tolerance should be applied. 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. The fields where tolerance can be applied are the following types of fields:

   a. Timestamp fields, such as execution timestamp where several minutes' requirement would be applied.

   b. Numerical value fields that are calculated such as principal amount on maturity date, where 1 basis point from the midpoint would be applied.

   c. Percentage values, where matching up to the third digit after the decimal would be applied.

364. ESMA proposes that the following fields are subject to reconciliation in accordance with the defined tolerance:

Table	Section	Field	Tolerance
Counterparty data	NA	Reporting Counterparty	No
Counterparty data	NA	Counterparty Side	No
Counterparty data	NA	Other counterparty	No
Transaction data	Loan	UTI	No
Transaction data	Loan	Cleared	No
Transaction data	Loan	Clearing Timestamp	Timestamp
Transaction data	Loan	CCP	No
Transaction data	Loan	Trading venue	No

Table	Section	Field	Tolerance
Transaction data	Loan	Master agreement	No
Transaction data	Loan	Execution timestamp	Timestamp
Transaction data	Loan	Value Date (Start Date)	No
Transaction data	Loan	Maturity Date (End Date)	No
Transaction data	Loan	Termination Date	No
Transaction data	Loan	Minimum notice period	No
Transaction data	Loan	Earliest Call-back Date	No
Transaction data	Loan	General Collateral Indicator	No
Transaction data	Loan	DBV Indicator	No
Transaction data	Loan	Method used to provide collateral	No
Transaction data	Loan	Open term	No
Transaction data	Loan	Termination optionality	No
Transaction data	Loan	Fixed rate	Percentage
Transaction data	Loan	Day count convention	No
Transaction data	Loan	Floating rate	No
Transaction data	Loan	Floating rate - time period	No
Transaction data	Loan	Floating rate reference period - multiplier	No
Transaction data	Loan	Floating rate payment frequency – time period	No
Transaction data	Loan	Floating rate payment frequency – multiplier	No
Transaction data	Loan	Floating rate reset frequency - time period	No
Transaction data	Loan	Floating rate reset frequency - multiplier	No
Transaction data	Loan	Spread	Percentage
Transaction data	Loan	Adjusted rate	Percentage
Transaction data	Loan	Rate Date	No
Transaction data	Loan	Principal amount on value date	No
Transaction data	Loan	Principal amount on maturity date	Calculated
Transaction data	Loan	Principal amount currency	No
Transaction data	Loan	Type of asset	No
Transaction data	Loan	Security or commodity identifier	No
Transaction data	Loan	Base product	No
Transaction data	Loan	Sub - product	No
Transaction data	Loan	Further sub - product	No
Transaction data	Loan	Quantity or nominal amount	No
Transaction data	Loan	Unit of measure	No
Transaction data	Loan	Security or commodity price	No
Transaction data	Loan	Forward price	Calculated
Transaction data	Loan	Price currency	No
Transaction data	Loan	Trade amount on value date (spot leg)	No
Transaction data	Loan	Trade amount on maturity date (forward leg)	Calculated

Table	Section	Field	Tolerance
Transaction data	Loan	Trade amount currency	No
Transaction data	Loan	Loan value	No
Transaction data	Loan	Rebate rate	No
Transaction data	Loan	Reinvestment rate	No
Transaction data	Loan	Lending fee	No
Transaction data	Loan	Outstanding loan	No
Transaction data	Loan	Currency of outstanding loan	No
Transaction data	Loan	Total margin financing available	Calculated
Transaction data	Loan	Remaining margin financing balance available	Calculated
Transaction data	Loan	Available margin financing currency	1 bp from midpoint
Transaction data	Loan	Short market value	Calculated
Transaction data	Loan	Short market value currency	No
Transaction data	Loan	Adjusted rate	No
Transaction data	Loan	Rate Date	No
Transaction data	Loan	Principal amount on value date	No
Transaction data	Collateral	Type of collateral component	No
Transaction data	Collateral	Collateral component	No
Transaction data	Collateral	Cash Collateral Amount	No
Transaction data	Collateral	Collateral quantity or nominal amount	No
Transaction data	Collateral	Identification of a collateral component (securities and commodities)	No
Transaction data	Collateral	Currency of collateral nominal amount	No
Transaction data	Collateral	Price currency	No
Transaction data	Collateral	Price per unit	No
Transaction data	Collateral	Collateral market value	Calculated
Transaction data	Collateral	Haircut or margin	Percentage
Transaction data	Collateral	Collateral quality	No
Transaction data	Collateral	Maturity of the security	No
Transaction data	Collateral	Jurisdiction of the issuer	No
Transaction data	Collateral	LEI of the issuer	No
Transaction data	Collateral	Availability for collateral Re-Use	No
Transaction data	Collateral	Collateral basket identifier	No
Transaction data	Collateral	Base product	No
Transaction data	Collateral	Sub - product	No
Transaction data	Collateral	Further sub - product	No
Transaction data	Collateral	Unit of Measure	No

Q80. **Do you agree with the fields proposed for reconciliation? Which other should be included, or which ones should be excluded? Please elaborate.**

Q81. **Do you agree with the proposed tolerance levels? Which other tolerance levels would you suggest? Please elaborate.**

Q82. **What other fields are suitable for establishing tolerance levels? What should be the tolerance level for those fields? Should the tolerance level be linearly or logarithmically related to the values? What other aspects should be taken into account? Please elaborate.**

5.1.3 Common response on reporting

5.1.3.1 Rejection response

365. As part of the use of the ISO 20022, ESMA proposed that standardised response messages compliant with ISO 20022 that TRs send to the report submitting entities and, where relevant, reporting counterparties or entities responsible for reporting. As indicated in paragraph 49 the TR should enable the reporting counterparties or entities responsible for reporting to access the data reported on their behalf.

366. 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. Some of the respondents proposed that the timing is agreed between the TRs and the report submitting entities and there is some flexibility, whereas some others proposed that rather than the TR sending a response, the information on the rejection is made available to the relevant entities via the user interface. 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. 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.

367. ESMA proposed also that in case of rejection of a file, the TR is able to specify whether it rejected the whole file because it is not complaint with the XSD or whether there were rejections one or several SFTs in the file, i.e. specific transactions were not compliant with

the validation rules. Based on the feedback received, ESMA understands that TRs must be 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.

368. A minimum set of rejection categories at UTI level, which will specify the relevant errors. would cover the following ones:

    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.

Q83. **Do you agree with the proposed logic for rejections messages? Do you agree with the proposed statuses of rejection messages? What other aspects should be taken into account? Please elaborate.**

5.1.3.2 Reconciliation response and relevant statuses

369. Following the conclusion of the reconciliation process, as described in paragraph 360, by 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

370. Reporting type will address the case whether both counterparties have reported to the same TR, i.e. dual sided, or whether the TR is aware of only one side, i.e. single-sided.

371. Reporting requirement for both counterparties refers 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.

372. Pairing status will define to what extent on the basis of the data on LEI and UTI, the TR has found the other side of the SFT at another TR or not.

373. Loan reconciliation status will describe whether the data pertaining to the loan of the SFT has been fully reconciled.

374. Collateral reconciliation status will determine to what extent the collateral data pertaining to an SFT has been reconciled.

375. Further modifications will flag whether the SFT has been amended following the establishment of the latest values for reconciliation.

376. The exact content of the response messages and the establishment of "Error codes" will be discussed with ISO as part of the definition of the XSD.

Q84. **Do you agree with the proposed reconciliation statuses? What other aspects should be taken into account? Please elaborate.**

5.1.3.3 End-of-day (EoD) response

377. Furthermore, ESMA also proposed that the TRs provide standardised response information to the reporting counterparties and the report submitting entities.

378. Some respondents 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, 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, ESMA proposes to keep both requirements.

379. Based on the above, ESMA proposes a minimum set of end-of-day reports to be provided by the TRs to the reporting counterparties and 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 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.

380. In terms of the way in which the information is presented, ESMA agrees that all sfiles might not be sent to the report submitting entities, but accessed through the TR interface. An automated process should be set up for daily reporting.

Q85. **Do you agree with the proposed end-of-day response to reporting counterparties, report submitting entities and entities responsible for reporting? What other information should be included? What are the potential costs of this information? Please elaborate.**

Q86. **What other End-of-day reports can be provided to reporting counterparties, report submitting entities and entities responsible for reporting?**

5.2 Public data

381. The Discussion Paper suggested requiring Trade Repositories to publish a wider range of data than is currently available under EMIR, but a narrower range than what will be available under the FSB's aggregations.

382. ESMA noted requests from a range of industry associations that commercially sensitive data should not be made public, and some market participants suggested it may be possible to identify specific counterparties in thinly traded markets. Set against this, other

respondents commented that the data should be more granular than that published under EMIR, as EMIR data tend to be high level and are difficult for users to make effective use of.

383.   ESMA proposes that under SFTR data should be aggregated the following criteria:

   a.   The location of the counterparty (EEA vs Non-EEA);

   b.   The location of the other counterparty;

   c.   The type of SFT (repo, securities lending etc.);

   d.   The reconciliation status of the SFT;

   e.   The type of venue of execution (on or off exchange);

   f.   Whether the SFT was cleared or not;

   g.   How the collateral was transferred (bilaterally, tri-party, etc.).

384.   ESMA proposes that the data that TRs would publish show 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.

385.   ESMA also notes that no respondents foresee any technical issues with publishing data on a weekly basis.

386.   Although ESMA takes on board the concerns related to confidentiality, it should be noted that some industry publications routinely publish data of a more granular nature than data published under EMIR. Given that a number of the aggregations proposed in the Discussion Paper are in line with current industry publications, ESMA believes that it is possible to publish data according to the aggregations set out above on a weekly basis without compromising counterparty confidentiality.

387.   ESMA also notes that the technical aspects of publication of data under SFTR are intended to be aligned to the extent possible with those under EMIR. In this respect, in order to allow the aggregation and comparison of data across trade repositories, ESMA is proposing the definition of the following technical aspects:

   a.   cut-off time at Friday 23:59:59;

b. provision of data by Tuesday;

c. use of ECB published exchange rates for rates conversion;

d. easily downloadable format, such as csv;

e. maintenance of public record of the last 52 weeks.

388. Although the rest of data reported and made available under SFTR would make use of ISO 20022, the data published by the TRs has more reduced volume and frequency, hence it would not require machine readable or automatic treatment. The use of flat csv files will also facilitate the use from the wider public and would not require the installation of specific software.

Q87. **Do you agree with the proposed aggregation criteria? What other aspects should be taken into account? Please elaborate.**

Q88. **Do you agree with the proposed technical aspects on aggregation of data? What other aspects should be taken into account?**

Q89. **Do you agree with the proposed timeline for keeping the data available on the website? Please elaborate.**

5.3 Data made available to authorities

5.3.1 Details of the SFTs to be provided to the authorities

389. 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 Annex X - RTS on access levels under SFTR, will specify the relevant levels of access to the data.

390. 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 considers 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.

391. 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.

5.3.2 Additional information on the SFTs to be generated by TRs

5.3.2.1 Rejection status field

392. 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 368.

393. 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 Discussion Paper 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.

394. As potential costs, some 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

395. 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 from reporting parties, authorities and TRs as well as the establishment of the inter-TR reconciliation process, the different values are specified in section 5.1.3.2. The respondents to the Discussion Paper supported this approach and proposed that ESMA defines those statuses in advance so that it will be easier for TRs to implement them. In this respect it is important to clarify that the reconciliation statuses will be included in the XSD.

396.   The information on the reconciliation status of the SFTs should be made available at least in the report showing the latest state of a given SFT. To the extent possible it has to be shown also in other 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 and, 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.

397.   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

398.   In order to allow the authorities address potential double counting issues, when a trade is at least paired, ESMA proposes 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.

Q90. **At which point in time do you consider that the additional data elements regarding an SFT will be available for authorities? What are the potential costs of the inclusion of the above mentioned additional data elements? Please elaborate.**

Q91. **What other data elements could be generated by the TRs and provided to authorities? Please elaborate.**

Q92. **In case a preliminary reconciliation status report is provided, what elements it should include? Please elaborate**

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

399. 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.

400. 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.

401. 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 Registration requirements under SFTR and under EMIR.

402. 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 SFT s 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.

Q93. **Considering the proposed termination of the inter-TR reconciliation process at 18:00, when at the earliest can a TR submit the reconciled data to the authorities?**

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

403. 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.

404. 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 contain the following details:

a. Reconciliation of the SFTs, in accordance with the values included in section 5.1.3.2;

b. Gross exposure between the counterparties, based on the relevant principal amounts;

c. Net exposure between the counterparties, based on the relevant principal amounts;

d. Type of SFT (repo, securities lending, etc.);

e. Indication of cleared or not;

f. Type of asset class of the collateral (cash, equities, corporate bonds, government bonds, etc.);

g. Currency of the cash leg;

h. Maturity bucket, where relevant, per each 0,5%;

i. Haircuts buckets, where relevant, per each 0,5%;

j. TR that holds the other side.

405. The frequency and timing of these reports have yet to be determined. In terms of the frequency of the generation of position reports, position reports would be sent to authorities as early as possible (T+2). However, delaying these reports would likely allow TRs to increase the number of matched transactions, which are essential for analysis.

406. With regards to the position 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 respondents provided mixed feedback. On the one hand, separating the reports is seen as positive in terms of quicker delivery by TRs. On the other hand, separating the two datasets might lead to actual issues. ESMA wants to further explore the potential costs and benefits of either approach.

407. 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.

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

Q94. **What is the optimal delay for provision of SFT position-level reports? What are the potential costs of the generation of above mentioned position reports? What other reports would you suggest to be provided by the TRs? Please elaborate.**

Q95. **Do you consider that there should be one position report including both reconciled and non-reconciled data or that there should be two position reports, one containing only reconciled data and the other one containing only non-reconciled data? What are the potential costs of the separation of above mentioned position reports? What are the benefits of the separation of above mentioned position reports? Please elaborate.**

5.3.5 Types of standardised aggregated SFT reports for authorities

409. 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 with the same frequency as established in the FSB November report.

410. Furthermore, EU authorities may require additional aggregate reports that differ from the public data to be made available by TRs.

5.4 Operational standards to aggregate and compare data across repositories

411. The Discussion Paper made two suggestions: 1) All reporting under SFTR (from counterparty to Trade Repository, and Trade Repository to Authorities) should be carried out using ISO 20022 standards, and 2) Trade Repositories should make data available to the Authorities by 07:00 Co-ordinated Universal Time the day after they have been reported.

412. A wide range of respondents, including Trade Repositories, noted that providing data to authorities in the ISO 20022 standard would not be problematic, and they also argue in favour of 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.

413. 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.

414. A number of respondents (including Trade Repositories) suggest moving the deadline to make data available to midday on the day after they have been reported. Respondents note that 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.

415. ESMA will therefore continue to require respondents to submit their reports to TRs using the ISO 20022 format, but 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.

Q96. **Do you agree with the proposal? What other aspects should be taken into account? Please elaborate.**

5.4.1 Avoidance of double counting

416. 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 does not propose to change the SFTR reporting regime to be single-sided.

417. The Discussion Paper set out six statuses related to the reconciliation status of an SFT which could be applied by Trade Repositories. Based on the assessment of responses as well as further discussions, ESMA proposes to use the set of reconciliation values referred to in section 5.1.3.2.

418. 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.

419. 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.

Q97.   **Do you agree with the proposed approach to avoid double counting? If not, what other aspects should be taken into account? Please elaborate.**

6 Data access levels

6.1 Background and general aspects

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

421. Under Article 12(3) of Regulation (EU) 2015/2365 of the European Parliament and of the Council on transparency of securities financing transactions and of reuse and amending Regulation 648/201237 (SFTR, hereinafter) 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:

> 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.*

422. Recital 13 SFTR provides that ESMA should take into consideration the technical standards adopted pursuant to Article 81 of 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, 38 (EMIR, hereinafter) 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.

423. The FSB report on "Standards and processes for global securities financing data collection and aggregation"39 has provided references to the CPSS-IOSCO reports on

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[37] OJ L 337, 23.12.2015, p. 1.
[38] OJ L 201, 27.7.2012, p. 1.
[39] http://www.fsb.org/wp-content/uploads/FSB-Standards-for-Global-Securities-Financing-Data-Collection.pdf

"OTC derivatives data reporting and aggregation requirements"40 and on "Authorities' access to trade repository data"41 which have been used as references for determination of data access under Commission Delegated Regulation (EU) No 151/201342 (EMIR RTS on access levels, hereinafter). The references are provided in order to establish the type 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.

424.   It is worth mentioning that there are several new authorities mentioned in Article 12 SFTR, although the majority are the same that already had access under Article 81 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 in paragraph 424 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[43]

        b.   the resolution authorities designated under Article 3 of Directive 2014/59/EU (BRRD)[44]

        c.   the Single Resolution Board established by Regulation (EU) No 806/2014 (SRMR)[45];

        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 ones referred in that Article are already covered.

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[40] http://www.bis.org/cpmi/publ/d100.pdf
[41] http://www.bis.org/cpmi/publ/d110.pdf
[42] 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).
[43] 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)
[44] 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).
[45] 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).

425. 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 should also be assessed. In this respect and taking into account that branch information for non-EU entities and EU branches of EU entities will also be reported, the access in those cases should also be addressed.

426. 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. 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 would aim at providing explicit references to the actual access levels both under EMIR and under SFTR.

427. Taking into account the intention of the co-legislators, ESMA understands that the access levels for authorities under SFTR and EMIR should be very similar. Any potential divergences under the two reporting regimes should be explained by the different responsibilities and mandates of the relevant authority with regards to the derivatives of SFTs at stake.

428. For the purposes of the empowerment under Article 12(3)(d) SFTR, ESMA proposes 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[46].

429. This section of the consultation paper generally discusses the access levels under SFTR and EMIR in joint fashion, however, where necessary, the appropriate differences and clarifications on the applicability of the proposed rules under either Regulation are clearly stated. By conducting joint consultation, ESMA intends avoiding the receipt of contradictory comments on the definition of the access levels under SFTR and EMIR.

6.1.1 General aspects of data access under EMIR and SFTR

430. 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

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[46] https://www.esma.europa.eu/sites/default/files/library/2016-422_final_report_rts_on_tr_data_under_art.81_emir.pdf

States many functions are centralised in one or two authorities, hence the total number of individual authorities accessing data most likely will be lower than 100.

431.   It is worth recalling that the access levels for the relevant authorities, both under EMIR and under SFTR, should be considered in their entirety and the authority's access level is the result of the cumulative application of the data resulting from the different responsibilities and mandates of the authority, i.e. taking into account the all responsibilities and mandates over counterparties, venues of executions, CCPs, currencies, products, underlying or securities and commodities, etc. Any relevant confidentiality aspects in this regard are addressed at the authority's level. So far ESMA has not been made aware of any difficulties experienced by the authorities while establishing the relevant internal procedures ensuring the confidentiality of data across the authority.

432.   However, in accordance with Article 2(2) of the EMIR RTS on access levels, ESMA has put in place a system with two different accesses to data – one for its supervision mandate and another one for its financial stability and systemic risk mandate. This has proved to be inefficient and has led to actual duplication of the storage and processing capacity at ESMA. ESMA fully acknowledges the differences related to access to TR-specific information, however this information does not relate to the derivatives contracts, hence ESMA does not consider practical and consistent to keep separate accesses to TR data. Therefore, ESMA proposes to apply consistently "one authority–one access" approach for data access to each authority.

433.   In some cases, both at Member State and at EU level, some 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 for which they are jointly responsible. Furthermore, it is also possible that two different responsibilities and mandates require the access to the same derivative or SFT. In those circumstances, providing access only to one authority would be against the requirement in both EMIR and SFTR that the access is based on the responsibilities and mandates. It will also lead to inefficiencies in the access to data and will hamper the achievement of the objectives of the regulations.

Q98. Do you agree with the proposed approach for single access per authority irrespective of the number of responsibilities and mandates it has? If not, what other aspects should be taken into account. Please elaborate.

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.

417. 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 the practical experience has shown that the rules establishing the access levels should be clearer and sets out the relevant proposals in this respect.

6.1.2.1 Transaction level data

418. 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".

419. The first aspect that had to be clarified referred to the access by the authorities to all the submissions relating to a derivative contact to which, based on the criteria included in Article 2 of EMIR RTS on access level, the relevant authority had access. Some of the trade repositories 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 understands that all the information regarding an SFT should be provided to each of the authorities having transaction level access to the particular SFT.

420. 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 passed the validations which 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.

421. This has 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 granular information because of at least two reasons: (i) the TRs were not

keeping granular transaction level data regarding all the rejections or (ii) the TRs were refusing to provide such data, because they considered the data confidential counterparty data and not part of the transaction data to which the authorities should have access. 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 was applied, the rejected submission would have been recorded by the TR and the authority would have had 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.

422.   ESMA further clarified this aspect through a Q&A and confirmed to the TRs that the authorities, that have transaction level access to data, should also have access to the rejections data as well as the reconciliation data, which are transaction data.

423.   As described in Recital 432 of the Commission Delegated Regulation 151/2013, of 19 December 2012, transaction data should include individual trade details. 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(c) of Commission Delegated Regulation 151/2013, 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.

424.   The above issues were addressed in the EMIR TR Q&A 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.

425.   The data on margins and reuse that is reported by counterparties under Article 4 SFTR is linked to the underlying SFTs, hence it is also considered transaction data.

Q99. **Do you agree with the proposed way to establish transaction level access to data reported under EMIR? What are the costs of establishing such a level of access? Please elaborate.**

Q100. **Do you agree with the proposed way to establish transaction level access to data reported under SFTR? What are the costs of establishing such a level of access? Please elaborate.**

6.1.2.2   Responsibilities and mandates and jurisdiction of an authority

426.   Another aspect that requires clarification and setting of the appropriate approach for EMIR RTS on access levels and for SFTR RTS on access levels is the concept of jurisdiction used in the current EMIR RTS on access levels. 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."

427.   On the one hand, jurisdiction can 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, however on the other hand it can be understood as more specifically 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, i.e. 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. Under the functional approach, an authority would have access only to the transactions executed by counterparties that fall under the mandate of the authority, i.e. 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.

428.   The potential confusion is stemming also from the general principles outlined in the CPSS-IOSCO's final report regarding Authorities' access to trade repository data, where jurisdiction is used with both meanings.

429.	In general, from the perspective of gathering more complete information, assimilating the concept of jurisdiction to territory, i.e. "territorial approach", rather than to responsibilities and mandates in the given territory, i.e. "functional approach", will allow the authorities' to have access to broader scope of data and it will reduce the need for ad-hoc data exchanges. Furthermore, it will allow for less error-prone implementation of the data access levels by TRs. In addition, it will also reduce the data fragmentation across authorities. Finally, besides the data access to branch data, the data access from entity perspective will be the same for all relevant authorities in a given territory.

430.	Alternatively, the concept of jurisdiction can be understood as the scope of the responsibilities and mandates of an authority over a given territory, e.g. the access to data from counterparty perspective is defined as to only those entities in the relevant territory which are in the scope of the authorities' responsibilities and mandates. This (i) ensures clear separation of functions between authorities, (ii) reflects more accurately responsibilities and mandates, (iii) increases the confidentiality of data and (iv) reduces the risks of misuse of data, also on the assumption underpinning all community legislation on access to confidential information that together with the confidentiality also the proper use of the information has to be ensured.

431.	ESMA understands that the responsibilities and mandates and the territory aspects need to be taken all into account, hence cannot be separated. Furthermore, the data access needs of an authority can be only justified by the relevant responsibilities and mandates, but not by a simple interest of the authority in question.

432.	Several authorities, mainly central banks, expressed interest for wider access to data both under EMIR and under SFTR, in order to fulfil their needs. As discussed in section 6.2.3, ESMA's analysis shows that there are close links between some of the SFTs, for instance repos, and the transmission of monetary policy. Hence it is justified that the access level of ESCB as issuer of the currency is to transaction data for SFTs in the currency issued by that ESCB member. This would mean in practice that a NCB 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[47] of 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 denominated in euros or where the cash leg is in euro. Furthermore, in order to ensure the assessment of the relevant monetary policy tools in the territory the ESCB members should have access to the data on SFTs of all the counterparties established in the relevant territory, i.e. the Euro area. This would mean that any NCB would have access to any SFT in euro even if concluded by two counterparties outside its territory.

433.	Such a link with the transmission of monetary policy is not immediate for derivatives where the functional approach has ensured so far that the relevant

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[47] 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.

authorities had access to the information needed to fulfil their mandates. 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 leverage, (iv) switch asset allocation or (v) set out expectations on the evolution of financial and non-financial assets.

434.   Given that the entities can tailor-made the terms of the contracts and use one OTC derivative, 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.

435.   On the other hand, the access to position data is more appropriate for carrying out the following activities (i) to assess 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.

436.   In summary, derivatives trades do not keep such direct relationship with transmission and implementation of monetary policy as the SFTs and derivatives positions are more appropriate for this purpose.

437.   It should also be noted that the very broad access level envisaged for SFT is not risk free. Many authorities will 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, as described in paragraph 430. Such a risk can be justified by the need for STF data as described above, but it would not be justified for the EMIR access level, where the existing approach proved to work.

438.   On that basis, the arguments for territorial approach for transaction level access to the data do not seem to apply under EMIR, and the greater access level will not be supported by any responsibility and mandate of the authorities, hence there are no additional needs to be covered or benefits to be delivered.

439.   Based on the above considerations, ESMA proposes to establish a territorial approach for data access in the given territory under SFTR and to keep the already existing functional approach for data access in the relevant territory under EMIR. This would lead to certain differences with regards to the definition of access levels between the two technical standards, however the access levels under both standards would be consistent for all authorities. This would ensure a level playing field on data access under both Regulations. ESMA understands that this difference is fully justified by the specificities of the instruments covered by the Regulations and by the different needs of the authorities with regards to those instruments.

Q101. Do you agree with the proposed functional approach under EMIR? If not, what other aspects should be taken into account. Please elaborate.

Q102. Do you agree with the proposed territorial approach under SFTR? If not, what other aspects should be taken into account. Please elaborate.

6.1.3 Home and host authority

440.   For the purposes of this document, home authority is considered the one of the Member State where the headquarters of the relevant counterparty subject to reporting obligation are established. Host authority is considered the one 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[48]

441.   A particularity of SFTR is that it requires the reporting of trades entered not only by the headquarters, but also by the branches. The rationale for this is outlined in section 2.2. Therefore, this aspect has to be 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.

442.   Article 16 SFTR contains a closed list of legislation under which a competent authority for the purposes of SFTR should be designated. In this respect and in order to establish a consistent approach for data access, ESMA proposes 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.

443.   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.

444.   To the extent possible and where the relevant timeline for submission of the technical standards under SFTR allows it, ESMA would aim at ensuring consistency between the access levels proposed for authorities and any EU initiatives in defining the exercise of supervisory responsibilities and mandates. Considerations in this consultation document refer to data access only and 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.

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[48] 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.

445.   All the relevant situations with regards to branches are defined in sections 6.5.1– 6.5.5 of this document.

Q103. **Do you agree with the proposed levels of access do data reported by branches included in section 6.5? If not, what other aspects should be taken into account. Please elaborate.**

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

446.   The access to data reported by subsidiaries is one of the areas of interest for both prudential and securities and markets authorities.

447.   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[49], the NFC becomes subject to similar requirements to those applicable to 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 in the group.

448.   Under CRD IV, CRR and SSMR, ECB in carrying out its tasks within a single supervisory mechanism (ECB-SSM, hereinafter) 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[50], 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. The access to data reported under EMIR and under SFTR would be organised following the functional and the territorial approach, respectively.

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[49] 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
[50] 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.

449.   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.

450.   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.

451.   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 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 [51], 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.

452.   Although there is some uncertainty on the forthcoming work of LEI data collection on relationship (group) information, ESMA would propose to include 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.

453.   As mentioned in paragraph 431, 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.

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[51] http://www.leiroc.org/publications/gls/lou_20161003-1.pdf

Q104. Do you agree with the proposed levels of access do data reported by subsidiaries under EMIR included in sections 6.5.1 – 6.5.5? If not, what other aspects should be taken into account. Please elaborate.

Q105. Do you agree with the proposed levels of access data reported by subsidiaries under SFTR included in sections 6.5.1 –6.5.5? If not, what other aspects should be taken into account. Please elaborate.

6.1.6 Definition of data access with regards to commodities

454.   The commodity derivatives to be reported under EMIR are clearly identified under MiFID. However, as mentioned in section 4.2.4.4, 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. At this stage and following the feedback received after the Discussion Paper, there is only a proposed type of classification of the commodities, however this classification on its own would not suffice to identify unequivocally the authority and the relevant territory, hence it will not be able to establish the access levels from that perspective. 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.

Q106. Is there any possible way to ensure the access to TR data from the perspective of commodities? Please elaborate.

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

455.   Considering that the data access under SFTR has to take into consideration the responsibilities and mandates similar to EMIR, ESMA proposes that the authorities, which already have had access to data under the EMIR RTS on access levels, would at least keep the same level of access to data under SFTR. Still some 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.

456.   Besides the clarifications included in sections 6.1.1, 6.1.2 and 6.1.5 and unless otherwise noted in the forthcoming paragraphs of Section 6.1.6, ESMA does not consider necessary any further amendment to the specific access rights of the authorities which were already accessing EMIR data.

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)

457.   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 would propose the inclusion of reference to access to data of subsidiaries of supervised entities.

458.   Using the EMIR access levels for the purposes of ensuring consistency, and taking into account the aspects discussed under sections 6.1.1, 6.1.2, 6.1.4 and 6.1.5, the following approach is proposed under SFTR. 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[52].

   g. SFTs where the authority is competent[53] 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[54] which has been used in the SFTs

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[52] This is the case for securities issued in a given Member State
[53] ESMA is still assessing whether there is a securities and markets authority competent for commodities.
[54] Under Article 3(3) of Regulation (EU) No XXX/2016 (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*

459.   The detailed access levels are included in section 6.5.1

Q107. Do you agree with the proposed access levels under SFTR for authorities competent for securities and markets? If not, what other aspects should be taken into account. Please elaborate.

6.2.2   Authorities competent for CCPs

460.   From derivatives point of view, CCPs would conclude derivative contacts 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. Secure investment of own treasury funds;

   c. Secure investment of cash collateral received in non-cash assets pursuant to Article 45(2) of Commission Delegated Regulation 153/2013.

461.   In accordance with the guidance on reporting in section 4.3.7, 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. 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.

Q108. Do you agree with the proposed access levels under SFTR for authorities supervising CCPs? If not, what other aspects should be taken into account. Please elaborate.

6.2.3   ESCB issuer of currency

462.   In view of the mandate and the organisation principles of the ESCB where the ESCB is responsible for the comprehensive assessment of financial stability risks in its jurisdiction (all markets, entities and products), it could be argued that ESCB should be granted full access to transaction data on all markets, products and collaterals. However, based on the conclusions of the CPSS-IOSCO Final report on Authorities' access to trade repository data referred to in paragraph 423, the authorities responsible

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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

for financial stability, general macro assessment, lender of last resort have access to position data on derivatives.

463. SFTR, as well as EMIR, require ESMA to determine the mandates for each of the members of the ESCB, not the ESCB as a whole. Hence ESMA understands that the relevant responsibilities and mandates of the ESCB members need to be carefully assessed and the access to data, as required under SFTR, for each individual ESCB member should be determined based on its responsibilities and mandates. Potential interest in certain SFT transactions cannot justify access to data, unless the interest is supported by a specific responsibility and mandate or a need stemming from those responsibilities and mandates.

464. Therefore, for financial stability purposes, assessment of the degree of interconnectedness, and market developments in collateral composition, funding terms, maturity profiles, leverage and currency mismatches, a comprehensive access to SFT transaction-level data might be required to assess, inter alia, risks of runs and fire sales for different market segments and collateral types. ESMA agrees with this rationale, however understand that the financial stability and systemic risk supervision mandates at EU level are performed by the ESRB, whereas counterparty prudential supervision, counterparty exposure composition, etc. are performed by the relevant national prudential authorities.

465. For the purposes of data access under SFTR, ESMA considers that given the close links between some of the SFT, for instance repos, and the transmission of monetary policy, the access level of ESCB as issuer of the currency should be to transaction data for SFTs in the currency issued by that ESCB member. This would mean in practice that a NCB 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[55] of the SFT is the currency of issuance of the NCB. Under this approach, all the central banks of the euro area including ECB would have access to all SFTs in euros, or where euro is used as part of the cash collateral.

466. Given that exchange rate developments can play a role in monetary policy considerations, another aspect to be considered relates to the access to data of trades concluded on non-domestic currency. Moreover, access to and analyses of these data could further increase the NCBs' understanding of the transmission mechanism and channels through which monetary policy affects the economy and may also play an important role in monitoring market liquidity. Although ESMA acknowledges the existence of certain links and interconnectedness mechanisms between monetary policies, ESMA considers that providing access to NCBs to all currencies because they might have some influence on the relevant currency of issuance of the NCB might not be fully consistent with the SFTR and EMIR principles for access based on

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[55] 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.

responsibilities and mandates and would gratuitously deviate from the relevant approaches outlined in section 6.1.2.2.

467.   As discussed in section 6.1.2.2, 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 leverage, (iv) switch asset allocation or (v) set out expectations on the evolution of financial and non-financial assets. The assessment of hedging of exposures and creation of optionality through OTC derivatives is more accurately performed on a transaction level, given that the entities can tailor-made the terms of the contracts and use one OTC derivative. However, individual transactions on derivatives are not appropriate to assess leverage, a switch in asset allocation or expectations of participants towards the evolution of financial and non-financial assets risks and trends. In conclusion, derivatives trades do not keep such direct relationship with transmission and implementation of monetary policy and derivatives positions are more appropriate for this purpose. On that basis, ESMA understands that the arguments for transaction level access to the data are not applicable under EMIR. Therefore, ESMA proposes keep the data access levels for ESCB included in the current EMIR RTS on access levels.

468.   Another aspect of the determination of the access to data refers to the securities lent or borrowed or provided as collateral under SFTR. Based on the approach adopted under section 6.1.2.2, ESMA proposes that the ESCB as bank of issue has access to SFTs where the government debt of the relevant member state or the euro area, in the case of ECB, is lent or borrowed or provided as a collateral, and/or where the issuer of the securities lent or borrowed or provided as a collateral is an entity established in the relevant member state or euro area.

469.   From the perspective of EMIR and following the conclusion for maintenance of the functional approach under EMIR, it will me made clear that the ESCB as bank of issue has access to derivatives where the reference entity of the derivative contract is established within their respective territory and falls within the scope of that authority according to its respective responsibilities and mandates, or where the reference obligation is sovereign debt of the respective territory.

470.   As proposed in section 6.1.1, there should be a single access at authority level which covers all the relevant responsibilities and mandates.

471.   The exact access levels are included in section 6.5.2 to this note.

Q109. Do you agree with maintaining the current access levels under EMIR for ESCB issuer of the currency? If not, what other aspects should be taken into account. Please elaborate.

Q110. Do you agree with the proposed access levels under SFTR for ESCB issuer of the currency? If not, what other aspects should be taken into account. Please elaborate.

6.2.4 Authorities competent for takeover bids

472.   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[56]. Consistently with the provisions under Article 2(6) and 2(7) EMIR RTS on access levels, ESMA proposes to reflect the different nature of the SFTs and adapt the provisions in the draft SFTR RTS 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. Furthermore, given the limited scope of responsibilities, the conclusion regarding territorial approach under SFTR would not be taken into account with regards to the takeover bids authorities.

Q111. Do you agree with the proposed access levels under SFTR for authorities competent for takeover bids? If not, what other aspects should be taken into account. Please elaborate.

6.2.5 ESMA and ESRB

473.   Under Article 1(5) of Regulation (EU) No 1095/2010 (ESMA Regulation)[57] 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

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[56] 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).
[57] 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).

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.

474.   Article 3 of Regulation 1092/2010[58] (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.

475.   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.

476.   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.

477.   It is worth mentioning that, stemming from its TR supervisory perspective, ESMA will also be entitled with access to all SFTR data.

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[58] 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).

478.   The access levels of the other two ESAs are defined under section 6.3.1.

Q112. Do you agree with the proposed access levels under SFTR for ESMA and ESRB? If not, what other aspects should be taken into account. Please elaborate.

6.2.6 ACER

479.   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. ACER's data access under SFTR would be to those SFTs where the commodity lent or borrowed or provided as collateral is energy contracts for which ACER is competent.

Q113. Do you agree with the proposed access levels under SFTR for ACER? If not, what other aspects should be taken into account. Please elaborate.

6.2.7 Third country authorities

480.   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 s 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 agreement with the Reserve Bank of Australia and the Australian Securities and Investments Commission.

481.   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;*

   a. *effective supervision of trade repositories and effective enforcement of their obligations takes place in that third country on an ongoing basis;*

   b. *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*

   c. *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.

482.   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

483.   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 TR, provided that certain safeguards are in place.

484.   For the purposes of the SFTR RTS on access levels, ESMA would propose 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

485.   Under Article 1(5) of Regulation (EU) No 1093/2010 (EBA Regulation)[59] and under Article 1(6) of Regulation (EU) 1094/2010 (EIOPA Regulation)[60], 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)

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[59] 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).
[60] 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).

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

486.   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".

487.   In summary, EBA and EIOPA have functions identical to those of ESMA, except for the supervision of TRs, which are exclusive to ESMA, and therefore, 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.

Q114. **Do you agree with the proposed access levels under EMIR for EBA and EIOPA? If not, what other aspects should be taken into account. Please elaborate.**

Q115. **Do you agree with the proposed access levels under SFTR for EBA and EIOPA? If not, what other aspects should be taken into account. Please elaborate.**

6.3.2 Prudential authorities and sectorial authorities

488.   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.

489.   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.

490.   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.

491.   The conclusions reached under Section 6.1.2.2 need to be taken into account for the purposes of EMIR and SFTR, respectively.

6.3.2.1 Single Supervisory Mechanism

492.   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

493.   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.).

494.   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, ECB-SSM should be entitled to access all the transaction data with regard to 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, etc.

495.   Specifically, for the purposes of SFTR, 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. Under SFTR, following the territorial approach, ECB-SSM would have 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.

496. All the relevant access rights to transaction data of entities and branches for ECB-SSM are included in the table in Section 6.5.1.

Q116. Do you agree with the proposed access levels under EMIR for ECB in carrying out its tasks within a single supervisory mechanism? If not, what other aspects should be taken into account. Please elaborate.

Q117. Do you agree with the proposed access levels under SFTR for ECB in carrying out its tasks within a single supervisory mechanism? If not, what other aspects should be taken into account. Please elaborate.

6.3.2.3 Prudential authorities under CRD IV[61] and CRR[62] participating in SSM

497. As mentioned in section 6.3.2, 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. 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 which are included in the scope of SSM. Therefore, ESMA understands that these authorities should have access to the trades reported by relevant counterparties established in their Member State. This stems also from the framework included in Regulation (EU) No 468/2014 of ECB[63].

498. 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. Under the supervision framework of CRD IV, CRR and SSMR, the supervision of branches of third country entities in participating Member State is entrusted to the national prudential authority. 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.

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[61] 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).
[62] 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).
[63] 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

499.	Finally, for the sake of completeness, as concluded in Section 6.1.2.2, under EMIR, the prudential authorities participating in the SSM would have access to all the SFTs reported by the entities under their respective supervisory responsibilities and mandates. Under SFTR, however. the prudential authorities participating in the SSM would have access also to all the SFTs reported by any entity established in the relevant participating Member State, or the branches of these entities in the Union or in third countries.

Q118.	**Do you agree with the proposed access levels under EMIR for national authorities competent for the prudential supervision under CRD IV and CRR which participate in the SSM? If not, what other aspects should be taken into account. Please elaborate.**

Q119.	**Do you agree with the proposed access levels under SFTR for national authorities competent for the prudential supervision under CRD IV and CRR which participate in the SSM? If not, what other aspects should be taken into account. Please elaborate.**

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

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

501.	In addition, for the sake of completeness, as concluded in Section 6.1.2.2, under EMIR, the prudential authorities non-participating in the SSM would have access to all the derivatives reported by the entities under their respective supervisory responsibilities and mandates. Under SFTR, however, the prudential authorities non-participating in the SSM would have access also to all the SFTs reported by any entity established in the relevant non-participating Member State, or the branches of these entities in the Union or in third countries.

502.	The access levels are defined in detail in the table in Section 6.5.1.

Q120. **Do you agree with the proposed access levels under EMIR for national authorities competent for the prudential supervision under CRD IV and CRR which do not participate in the SSM? If not, what other aspects should be taken into account. Please elaborate.**

Q121. **Do you agree with the proposed access levels under SFTR for national authorities competent for the prudential supervision under CRD IV and CRR which do not participate in the SSM? If not, what other aspects should be taken into account. Please elaborate.**

6.3.2.5   Insurance Authorities

503.   The supervisory authorities under Solvency II are now 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. The particularities of the determination of access levels and supervisory responsibilities are detailed in Section 6.5.4.

504.   As mentioned earlier, 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[64]. 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. 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.

505.   Furthermore, for the sake of completeness, as concluded in Section 6.1.2.2, under EMIR, the insurance authorities would have access to all the derivatives reported by the entities under their respective supervisory responsibilities and mandates. Under SFTR, however. the insurance authorities would have access also to all the SFTs reported by any entity established in the relevant participating Member State, or the branches of these entities in the Union or in third countries.

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[64] https://eiopa.europa.eu/Publications/Administrative/List%20of%20groups%202015_Final_29012016.pdf

Q122. **Do you agree with the proposed access levels under EMIR for national supervisory authorities under Solvency II? If not, what other aspects should be taken into account. Please elaborate.**

Q123. **Do you agree with the proposed access levels under SFTR for national supervisory authorities under Solvency II? If not, what other aspects should be taken into account. Please elaborate.**

6.3.2.6   UCITS and AIF authorities

506.   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.

507.   The access to data of branches under EMIR is not possible, hence it should be kept to the relevant entities authorised under UCITS and AIFMD. The exact access levels are included in section 6.5.5.

508.   For the sake of completeness, as concluded in Section 6.1.2.2, the authorities competent for UCITS and AIFs would have access to all the derivatives reported by the entities (UCITS, AIFs, or the management companies of those) under their respective supervisory responsibilities and mandates. Under SFTR, however, the authorities competent for UCITS and AIFs would have access to all the SFTs reported by any entity established in the relevant Member State, or the branches of these entities in the Union or in third countries.

Q124. **Do you agree with the proposed access levels under EMIR for national competent authorities under UCITS and AIFMD? If not, what other aspects should be taken into account. Please elaborate.**

Q125. **Do you agree with the proposed access levels under SFTR for national competent authorities determined under Solvency II? If not, what other aspects should be taken into account. Please elaborate.**

6.3.2.7   Occupational Pensions authorities

509.   The amendment of Article 81(30 include reference also the authorities competent for the supervision of institutions providing occupational pensions. 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 424 and with the information requirements referred

to in paragraph 426. 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.

510.   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.

511.   For the sake of completeness, as concluded in Section 6.1.2.1 , the authorities competent for occupational pensions would have access to all the derivatives reported by the entities under their respective supervisory responsibilities and mandates. Under SFTR, however, the authorities competent for occupational pensions would have access to all the SFTs reported by any entity established in the relevant Member State, or the branches of these entities in the Union or in third countries.

6.3.3   National Resolution Authorities and Single Resolution Board

512.   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.

513.   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)[65], 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.

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[65] 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).

514.   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.

515.   In this respect, 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) 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)

516.   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.

517.   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.

518.   ESMA proposes 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 514 and 515 from the moment in which such designation takes place, i.e. before any actual resolution procedure starts.

519.   For the sake of completeness, as concluded in Section 6.1.2.1, the resolution authorities would have access to all derivatives reported by the entities under their respective supervisory responsibilities and mandates. Under SFTR, however, the resolution authorities would have access to all the SFTs reported by any entity established in the relevant Member State, or the branches of these entities in the Union or in third countries.

520.   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.

Q126. **Do you agree with the proposed access levels under EMIR for national resolution authorities? If not, what other aspects should be taken into account. Please elaborate.**

Q127. **Do you agree with the proposed access levels under EMIR for SRB? If not, what other aspects should be taken into account. Please elaborate.**

Q128. **Do you agree with the proposed access levels under SFTR for national resolution authorities? If not, what other aspects should be taken into account. Please elaborate.**

Q129. **Do you agree with the proposed access levels under SFTR for SRB? If not, what other aspects should be taken into account. Please elaborate.**

6.4 Terms and conditions for data access under SFTR

521.   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*.

522.   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.

523.　　Moreover, to address the aforementioned issue, ESMA proposes to include a specific provision in the draft SFTR RTS on access levels which 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.

524.　　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

525.　　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 and

      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.

526.　　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 and table are defined in paragraphs 528-529.

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

527. 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.

528. 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

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

a. Territory, e.g. Member State, euro area or EU, for which the authority is competent, both for legal entities and for branches

b. Types of SFTs which are supervised

    c. Securities that were borrowed or lent or provided as a collateral issued by an entity established in the relevant territory, that is supervised by the relevant authority

    d. Commodities produced or delivered in the relevant territory, which were either borrowed or lent or provided as a collateral

    e. Venues of execution

    f. CCPs

    g. Currency of issue

Q130. **Are there any other aspects that need to be included in the procedure to be put in place by the trade repository? Please elaborate.**

Q131. **Is there any additional information that needs to be included in the templates and tables? Please elaborate.**

6.4.2 Technical arrangements for data access

530. 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.

531. The operational and technical arrangements for access to data under SFTR should leverage on the infrastructure and proposals which 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[66]. In summary, through those standards ESMA proposes 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

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[66] https://www.esma.europa.eu/sites/default/files/library/2016-422_final_report_rts_on_tr_data_under_art.81_emir.pdf

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

6.4.2.1 Secure machine-to-machine connection

532.   Under EMIR, most of the TRs are providing access to the data reported to them mainly through Internet-based portals. The practical experience has 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.

533.   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.

534.   In order to ensure consistency with EMIR and to provide for a consistent and secure data transfer between TRs and authorities, ESMA proposes in the draft SFTR RTS 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.

535.   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 proposes that the TRs should use electronic signature and data encryption protocols, when providing access to or making available the data to the authorities. Furthermore, in the consultation paper it was indicated that 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.

6.4.2.2 Data exchange between TRs and authorities

536.   ESMA proposes that an XML template based on ISO 20022 methodology is used to facilitate aggregation and comparison of data across repositories as explained in details in section 15 It is worth mentioning that, in order to allow automatic treatment by authorities, the communications between the TRs and the authorities, as it is proposed under EMIR, should also be supported by messages based on ISO compliant methodology.

537. The use of ISO 20022 will ensure the correct and harmonised handling of the communications between the TRs and the authorities. ESMA will profit 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.

538. 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.

6.4.2.3 Query functionalities

539. 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 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. Both query types serve different purposes and both are considered complementary in their implementation and use.

540. 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, the most updated state of the trades with open interest (i.e. not terminated by the counterparties) as well as data on those trades which have reached the TR after the T+1[67] reporting deadline.

541. 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

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[67] It is usual practice to define the trade date as (T) and subsequently the reporting deadline – the following business day after the conclusion, modification or termination of a derivative contract- as (T+1).

investigations. ESMA proposes that TRs should allow ad-hoc queries based on any combination of the following XX fields[68]:

a. Fields related to the parties, such as "Reporting Counterparty ID", "ID of the other Counterparty", "Broker ID", "Report submitting entity ID", "Beneficiary ID", 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 "Corporate 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", "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

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[68] The names of all the fields are as per ESMA's Final Report "Review of the Regulatory and Implementing Technical Standards on reporting under Article 9 of EMIR" submitted to the European Commission on 13 November 2015

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

542.   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". ESMA proposes to align the provision of frequency and timelines sf the data access with EMIR.

543.   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" or "C", 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.

544.   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. In the case of transaction data regarding SFTs which have matured or for which submissions with action types "E" or "C" 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.

545.   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[69], the TRs provide access to the reports resulting from the relevant ad-hoc queries, defined in paragraph 542, even if those were requested on T+1. 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.

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[69]   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.

6.4.2.5 Validation of data requests

546. The proposed amendments to the operational standards 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 proposes 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 would allow the authority to quickly react and to amend the criteria included in the query.

Q1. Do you agree with ensuring consistency of the technical arrangements for access to data under EMIR and SFTR? If not, please indicate the particular aspects that you consider need to be amended. Please elaborate.

6.5 Tables with access levels

6.5.1 Access to data by securities and markets authorities (defined in points f), j) and o) of Article 81(3) EMIR and points e), i) and m) of Article 12(2) SFTR)

	Home authority	Host authority
Note: TC – third country, MS – Member State		
Entities with reporting obligation established in the MS	Yes	No
Branches of entities with reporting obligation (SFTR only)	Yes	No
- of TC entities in the MS	N/A	Yes
- of MS entities in another MS	Yes	Yes/No[70]
- of MS entities in TC	Yes	N/A
Subsidiaries of entities with reporting obligation	Yes	No
- of TC entities in the MS	N/A	Yes
- of MS entities in another MS	Yes	Yes
- of MS entities in TC	N/A	N/A
Venue of execution	Yes	No
Securities or issuer of securities	Yes	No
Commodities lent or borrowed or provided as collateral (SFTR)	Yes	No
Benchmark used	Yes	No

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[70] Subject to an arrangement between the home and the host authority.

6.5.2 Access to data by ESCB and members of SSM

6.5.2.1 Access to EMIR transaction data

	Should ECB-SSM have access?	Should NCAs part of the SSM have access?	Should NCAs not participating in SSM have access	ESCB as bank of issue

Note: TC – third country, MS – Member State, CS – consolidating supervisor, etc.

Entities authorised under CRD IV, CRR and SSMR				
-Significant and established in member state participating in the SSM	Yes	Yes	No	No
-Not significant and established in member state participating in the SSM	Yes	Yes	No	No
-Established in member state not participating in the SSM	No	No	Yes	No

Subsidiaries of the entities authorised under CRD IV, CRR and SSMR				
- of TC entities in participating MS	Yes	Yes	No	No
- of TC entities in non-participating MS	No	No	Yes	No
- of participating MS entities in another participating MS	Yes	Yes, both	No	No
- of participating MS entities in non-participating MS	Yes	Yes	Yes	No
- of participating MS entities in TC	n/a	n/a	n/a	n/a
- of non-participating MS entities in participating MS	Yes	Yes	Yes	No
- of non-participating MS entities in non-participating MS	No	No	Yes, both	No
- of non-participating MS entities in TC	n/a	n/a	n/a	n/a

Holding company	Yes, if CS	Yes, if CS	Yes, if CS	No

Currency of the derivative				
- Currency of issue	No	No	No	No[71]
- Other currencies	No	No	No	No

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[71] They will have access to position data form currency perspective

	Should ECB-SSM have access?	Should NCAs part of the SSM have access?	Should NCAs not participating in SSM have access	ESCB as bank of issue
Note: TC – third country, MS – Member State, CS – consolidating supervisor, etc.				
Underlying perspective				
- sovereign debt of MS / territory	No	No	No	Yes
- sovereign debt of other MS / territory	No	No	No	No
- issuer is established in participating MS	Yes	Yes	No	No[72]
- issuer is established in non-participating MS	No	No	Yes	No[73]
- issuer is established in TC	No	No	No	No
- Currency of the underlying is currency of issue	No	No	No	Yes
- Currency of the underlying is not currency of issue	No	No	No	No

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[72] To have access to this data, the ESCB issuer of the currency has to be also a prudential authority
[73] Idem.

6.5.2.2 Access to SFTR transaction data

	Should ECB-SSM have access?	Should NCAs part of the SSM have access?	Should NCAs not participating in SSM have access	Eurosystem CB[74] as bank of issue	Non-Eurosystem CB of the MS as bank of issue
Note: TC – third country, MS – Member State, CS – consolidating supervisor, etc.					
-Entities established in member state participating in the SSM	Yes	Yes	No	Yes	No
-Entities established in member state not participating in the SSM	No	No	Yes	No	Yes
Subsidiaries					
- of TC entities in participating MS	Yes	Yes	No	Yes	No
- of TC entities in non-participating MS	No	No	Yes	No	Yes
- of participating MS entities in another participating MS	Yes	Yes, both	No	Yes	No
- of participating MS entities in non-participating MS	Yes	Yes	Yes	Yes	Yes
- of participating MS entities in TC	n/a	n/a	n/a	n/a	n/a
- of non-participating MS entities in participating MS	Yes	Yes	Yes	Yes	Yes
- of non-participating MS entities in non-participating MS	No	No	Yes, both	No	Yes, both
- of non-participating MS entities in TC	n/a	n/a	n/a	n/a	n/a
Branches					
- of TC entities in participating MS	No	Yes	No	Yes	No
- of TC entities in non-participating MS	No	No	Yes	No	Yes
- of participating MS entities in another participating MS	Yes	Yes, both	No, unless CS	Yes	No
- of participating MS entities in non-participating MS	Yes	Yes	Yes	Yes	Yes
- of participating MS entities in TC	Yes	Yes	No	Yes	No
- of non-participating MS entities in participating MS	Yes	Yes	Yes	Yes	Yes
- of non-participating MS entities in non-participating MS	No	No	Yes, both	No	Yes, both
- of non-participating MS entities in TC	No	No	Yes	No	Yes

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[74] Access form entity's perspective is only for the relevant national central bank, not all the banks in the Eurosystem.

	Should ECB-SSM have access?	Should NCAs part of the SSM have access?	Should NCAs not participating in SSM have access	Eurosystem CB[74] as bank of issue	Non-Eurosystem CB of the MS as bank of issue
Note: TC – third country, MS – Member State, CS – consolidating supervisor, etc.					
Holding company	Yes, if CS	Yes, if CS	Yes, if CS	Yes	Yes
Currency of the loan					
- Currency of issue	No	No	No	Yes	Yes
- Other currencies	No	No	No	No	No
Collateral perspective					
- sovereign debt of MS / territory	No	No	No	Yes	Yes
- sovereign debt of other MS / territory	No	No	No	No	No
- issuer is established in participating MS	Yes	Yes	No	Yes	No
- issuer is established in non-participating MS	No	No	Yes	No	Yes
- issuer is established in TC	No	No	No	No	No
- Currency in which collateral is provided is currency of issue	No	No	No	Yes	Yes
- Currency in which collateral is provided is not currency of issue	No	No	No	No	No

6.5.3 Access to data by SRB and NRAs

6.5.3.1 Access to EMIR transaction data

Note: TC – third country, MS – Member State, CS – consolidating supervisor, etc.	Should SRB-SRM have access?	Should NRA[75]s part of the SRM have access?	Should NRAs not participating in SRM have access
Entities subject to BRRD and SRMR			
-Significant and established in participating MS	Yes	Yes	No
-Not significant and established in participating MS	Yes	Yes	No
-Established in non-participating MS	No	No	Yes
Subsidiaries of the entities subject to BRRD and SRMR			
- of TC entities in participating MS	Yes	Yes	No
- of TC entities in non-participating MS	No	No	Yes
- of participating MS entities in another participating MS	Yes	Yes, both	No
- of participating MS entities in non-participating MS	Yes	Yes	Yes
- of participating MS entities in TC	n/a	n/a	n/a
- of non-participating MS entities in participating MS	Yes	Yes	Yes
- of non-participating MS entities in non-participating MS	No	No	Yes, both
- of non-participating MS entities in TC	n/a	n/a	n/a
Consolidating entity	Yes, if group resolution authority	Yes, if group resolution authority	Yes, if group resolution authority
Underlying perspective			
- sovereign debt of MS / territory	No	No	No
- sovereign debt of other MS / territory	No	No	No
- issuer is established in participating MS	Yes	Yes	No
- issuer is established in non-participating MS	No	No	Yes
- issuer is established in TC	No	No	No

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[75] National authority designated for resolution of entities subject to BRRD and SRMR

6.5.3.2 Access to SFTR transaction data

	Should SRB-SRM have access?	Should NRA[76]s part of the SRM have access?	Should NRAs not participating in SRM have access
Note: TC – third country, MS – Member State, CS – consolidating supervisor, etc.			
-Entities established in participating MS	Yes	Yes	No
-Entities established in non-participating MS	No	No	Yes
Subsidiaries			
- of TC entities in participating MS	Yes	Yes	No
- of TC entities in non-participating MS	No	No	Yes
- of participating MS entities in another participating MS	Yes	Yes, both	No
- of participating MS entities in non-participating MS	Yes	Yes	Yes
- of participating MS entities in TC	n/a	n/a	n/a
- of non-participating MS entities in participating MS	Yes	Yes	Yes
- of non-participating MS entities in non-participating MS	No	No	Yes, both
- of non-participating MS entities in TC	n/a	n/a	n/a
Branches of entities referred to in CRD and BRRD			
- of TC entities in participating MS	No	Yes	No
- of TC entities in non-participating MS	No	No	Yes
- of participating MS entities in another participating MS	Yes	Yes, both	No
- of participating MS entities in non-participating MS	Yes	Yes	Yes
- of participating MS entities in TC	Yes	Yes	No
- of non-participating MS entities in participating MS	Yes	Yes	Yes
- of non-participating MS entities in non-participating MS	No, unless group resolution	No, unless group resolution	Yes, both
- of non-participating MS entities in TC	No, unless group resolution	No, unless group resolution	Yes
Consolidating entity	Yes, if group resolution authority	Yes, if group resolution authority	Yes, if group resolution authority
Collateral perspective			
- sovereign debt of MS / territory	No	No	No
- sovereign debt of other MS / territory	No	No	No
- issuer is established in participating MS	Yes	Yes	No
- issuer is established in non-participating MS	No	No	Yes
- issuer is established in TC	No	No	No

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[76] National authority designated for resolution of entities subject to BRRD and SRMR

6.5.4 Access to data by Insurance and pensions supervisors

6.5.4.1 Access to EMIR transaction data

	Home authority	Host authority
Entities subject to Solvency II		
-Established in the EU	Yes	n/a
Subsidiaries of the entities in Solvency II		
- of TC entities in the EU	n/a	Yes
- of EU entities in another EU MS	Yes	No
- of EU entities in TC	n/a	n/a
Consolidating entity	Yes	Yes
Entities subject to Pensions Directive		
-Established in the EU	Yes	No
Consolidating entity	n/a	n/a

6.5.4.2 Access to SFTR transaction data

	Home authority	Host authority
Entities established in the MS	Yes	No
Branches of entities with reporting obligation	Yes	No
- of TC entities in the MS	N/A	Yes
- of MS entities in another MS	Yes	Yes/No[77]
- of MS entities in TC	Yes	N/A
Subsidiaries of entities with reporting obligation	Yes	No
- of TC entities in the MS	N/A	Yes
- of MS entities in another MS	Yes	Yes
- of MS entities in TC	N/A	N/A
Consolidating entity	Yes	Yes

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[77] Subject to an arrangement between the home and the host authority.

6.5.5 ccess to data by authorities competent for supervision under UCITS and AIFMD

6.5.5.1 Access to EMIR transaction data

UCITS		
	Home authority	Host authority
Management company of UCITS		
-Established in EU MS	Yes	n/a
Branches of management companies of UCITS		
- of TC entities in the EU	n/a	Yes
- of EU entities in another EU MS	Yes	Yes
- of EU entities in TC	Yes	n/a
Subsidiaries management companies of UCITS		
- of TC entities in the EU	n/a	Yes
- of EU entities in another EU MS	Yes	Yes
- of EU entities in TC	Yes	n/a
UCITS		
-registered in a EU MS	Yes	Yes
-registered in a TC	Yes	Yes

AIFMD		
	Home	Host
Management company of AIF		
-Established in EU MS	Yes	n/a
Branches of management companies of AIF		
- of TC entities in the EU	n/a	Yes
- of EU entities in another EU MS	Yes	Yes
- of EU entities in TC	Yes	n/a
Subsidiaries management companies of AIF		
- of TC entities in the EU	n/a	Yes
- of EU entities in another EU MS	Yes	Yes
- of EU entities in TC	Yes	n/a
AIF		
-registered in a EU MS	Yes	Yes
-registered in a TC	Yes	Yes

6.5.5.2 Access to SFTR transaction data

	Home authority	Host authority
Entities established in the MS	Yes	No

Branches		
- of TC entities in the MS	N/A	Yes
- of MS entities in another MS	Yes	Yes/No[78]
- of MS entities in TC	Yes	N/A

Subsidiaries of entities with reporting obligation		
- of TC entities in the MS	N/A	Yes
- of MS entities in another MS	Yes	Yes
- of MS entities in TC	N/A	N/A

Consolidating entity	Yes	Yes

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[78] Subject to an arrangement between the home and the host authority.

7 Annex I – Summary of questions

Summary of questions

Q1.   Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.

Q2.   Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.

Q3.   Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.

Q4.   Do you consider that the currently used classification of counterparties is granular enough to provide information on the classification of the relevant counterparties? Alternatively, would the SNA be a proper way to classify them? Please elaborate.

Q5.   Do you foresee issues in identifying the counterparties of an SFT trade following the above-mentioned definitions?

Q6.   Are there cases for which these definitions leave room for interpretation? Please elaborate.

Q7.   Based on your experience, do you consider that the conditions detailed in paragraph 106 hold for CCP-cleared SFTs? Please elaborate.

Q8.   In the case of CCP-cleared SFT trades, is it always possible to assign and report collateral valuation and margin to separately concluded SFTs? If not, would this impair the possibility for the counterparties to comply with the reporting obligation under Article 4 SFTR? Please provide concrete examples.

Q9.   Would the suggested data elements allow for accurate reporting at individual SFT level and CCP-cleared position level? In line with approach described above?

Q10.   If so, are there any specific issues that need to be taken into account to adapt the EMIR approach to the SFT reporting?

Q11.   Do you agree with the proposed report types and action types? Do you agree with the proposed combinations between action types and report types? What other aspects need to be considered? Please elaborate.

Q12.   The modifications of which data elements should be reported under action type "Modification of business terms"? Please justify your proposals.

Q13.   The modifications of which data elements should be reported under action type "Other modification"? Please justify your proposals.

Q14.   Do you agree with the revised proposal to use the terms "collateral taker" and "collateral giver" for all types of SFTs?

Q15.   Are the proposed rules for determination of the collateral taker and collateral giver clear and comprehensive?

Q16.   Are you aware of any other bilateral repo trade scenario? Are there any other actors missing which are not a broker or counterparty? Please elaborate.

Q17.   Do you consider that the above scenarios also accurately capture the conclusion of buy/sell-back and sell/buy back trades? If not, what additional aspect should be included? Please elaborate.

Q18.   Are the most relevant ways to conclude a repo trade covered by the above scenarios? Are the assumptions correct? Please elaborate.

Q19.   Are the most relevant ways to conclude a securities lending transaction covered by the above scenarios? Are the assumptions correct? Please elaborate.

Q20.   Would it be possible to link the 8 trade reports to constitute the "principal clearing model" picture? If yes, would the method for linking proposed in section 4.3.4 be suitable?

Q21.   In the case of securities lending transactions are there any other actors missing?

Q22.   What potential issues do reporting counterparties face regarding the reporting of the market value of the securities on loan or borrowed?

Q23.   Do you agree with the proposal with regards to reporting of uncollateralised SFTs? Please elaborate.

Q24.   Do you agree with the proposal with regards to reporting of SFTs involving commodities? Please elaborate.

Q25.   Are there any obstacles to daily position reporting by margin lending counterparties? Do prime brokers provide information to their clients about intraday margin loans?

Q26.   Which kinds of guarantees or indemnifications exist in relationship to prime brokerage margin lending? Are there other parties possibly involved in a margin loan? Please provide an example.

Q27.   What types of loans or activities, other than prime brokerage margin lending, would be captured in the scope of margin lending under the SFTR definition? Please provide details on their nature, their objective(s), the execution and settlement, the parties involved, the existing reporting regimes that these may already be subject to, as well as any other information that you deem relevant for the purpose of reporting.

Q28.   Are there any obstacles to the collection of data on the amount of margin financing available and outstanding margin balance? Are there any alternatives to collect data on "Free credit balances", as required by the FSB? Please provide an example.

Q29.   Are there any obstacles to the reporting of (positive or negative) cash balances in the context of margin lending?

Q30.   Are data elements on margin financing available and outstanding balances relevant for margin loans *outside* the prime brokerage context? Please provide examples.

Q31.   Is the short market value reported to clients at the end of the day part of the position snapshot? What is the typical format and level of granularity included in the information communicated to clients?

Q32. Is the data element on short market value relevant for margin loans *outside* the prime brokerage context? Please provide examples.

Q33. Do you agree with the proposed structure of the SFT reports? If not, how you would consider that the reporting of reuse and margin should be organised? Please provide specific examples.

Q34. What are the potential costs and benefits of reporting re-use information as a separate report and not as part of the counterparty data? Please elaborate.

Q35. What are the potential costs and benefits of reporting margin information as a separate report and not as part of the counterparty data? Please elaborate.

Q36. Are there any fields which in your view should be moved from the Counterparty to the Trade-related data or vice-versa? If so, please specify the fields clarifying why they should be moved.

Q37. Is tri-party agent expected to be the same for both counterparties in all cases? If not, please specify in which circumstances it can be different.

Q38. Do you agree with the proposed fields included in the attached Excel document? Please provide your comments in the specified column.

Q39. Do you agree with the proposal to identify the country of the branches with ISO country codes?

Q40. Do you agree with the proposed approach with regards to the reporting of information on beneficiaries? If not, what other aspects need to be considered? Please elaborate.

Q41. Would exempting CCPs from reporting the Report Tracking Number field would reduce the reporting burden on the industry.

Q42. Could you please provide information on incremental costs of implementing the proposal, taking into account that systems will have to be changed to implement the SFTR reporting regime in general?

Q43. Could you please provide views on whether you would prefer Alternative 1 (prior-UTI) over Alternative 2 (relative referencing solution)? Please provide relative costs of implementing both proposals.

Q44. Do you agree with the above rules for determining the entity responsible for the generation and transmission of the UTI? If not what other aspects should be taken into account? Please elaborate.

Q45. Do you agree with the logic and framework for reporting of margins for CCP-cleared SFTs? What other aspects should be taken into account? Please elaborate.

Q46. Would you agree with the definition of terms? If not, please explain.

Q47. Are the cases for which collateral can be reported on trade level accurately described? If not, please explain.

Q48. In addition to the exceptions listed above, when would the collateral for a repo trade that does not involve a collateral basket not be known by the reporting deadline of end of T + 1?

Q49. Could the counterparties to a CCP-cleared cash rebate securities lending trade report an estimated value for the cash collateral in the markets in which the CCP calculates the initial cash value on the intended settlement date? If not, please explain.

Q50. Are the cases for which collateral would be reported on the basis of the net exposure accurately described? If not, please explain.

Q51. Is the understanding of ESMA correct that CCP-cleared trades are excluded from the calculation of net exposures between two counterparties? If not, please explain.

Q52. Is the assumption correct that the counterparties can report the assets available for collateralisation in the collateral portfolio for margin lending with the balance of the outstanding loan? If not, please explain.

Q53. Are you aware of any scenarios that would require at the end of day the reporting of cash not only as principal amount, but also as cash collateral for repos? If yes, please describe.

Q54. Would you foresee any specific challenges in implementing the proposed logic for linking? If yes, please explain.

Q55. In which case would counterparties need to provide a bilaterally agreed unique code for linking trades to collateral? Please explain.

Q56. Is there a case where more than one bespoke bilateral agreement is concluded between two counterparties?

Q57. Is it possible, for a pair of counterparties to have more than one master agreement or more than one bespoke agreement per SFT type? In these cases, please specify, how these agreements are identified between the counterparties? Please provide examples.

Q58. How costly would it be for your firm to report individual securities? If possible, please provide a quantitative estimation of the costs.

Q59. Would the reporting of outstanding balances by asset class facilitate reporting? How costly would it be for your firm to develop and implement such a reporting? If possible, please provide a quantitative estimation.

Q60. Are there other obstacles to collecting position-level data on funding sources for each prime broker? If this is the case, please provide an example, and whether there is a viable alternative.

Q61. What type of information or guidance would be required in order for funding sources to be reported consistently across all reporting counterparties?

Q62. Can data elements on funding sources be reported for margin loans *outside* the prime brokerage context? Please provide examples.

Q63. How are portfolio leverage ratios calculated? Please provide an example of the formulas typically used.

Q64. What are the potential costs of providing the re-use data as outlined in this section? Are there other options to link collateral that is re-used to a given SFT or counterparty? Please document the potential issues. Please elaborate.

Q65. Would it be easier to report collateral re-use in a separate message as proposed or, it will be better repeating the information as part of the counterparty data?

Q66. Would the effort of reporting re-use on a weekly or monthly basis reduce significantly the costs?

Q67. Are there cash re-investment programmes for agent lenders acting as principal?

Q68. Do you agree that the term type and the way maturity is measured (e.g. weighted average maturity) are appropriate elements for the purpose of monitoring potential liquidity risks from maturity mismatch between the securities loan and the reinvestment of cash collateral? Are there other elements you believe ESMA should consider collecting? Do you see any obstacles to the reporting of these elements, or their analysis? Please explain.

Q69. What is the methodology your firm uses to compute the weighted-average life and maturity of cash collateral portfolios? Do you expect this methodology to vary significantly across firms?

Q70. Do you agree with the proposed approach? What other aspects need to be taken into account? Pleas elaborate.

Q71. Do you agree with the proposed approach? Please elaborate.

Q72. Do you agree with the proposed approach with regards to reporting of master agreements? What other aspects need to be considered? Please elaborate.

Q73. Do you agree with the proposed approach with regards to reporting of method of trading? What other aspects need to be considered? Please elaborate.

Q74. In your view, what information on the nature of the indemnification (guarantee of the value, replacement of the securities, etc.), relevant for the monitoring of financial stability in relation to indemnifications could be reported? What type of data would be reported for each of the suggested elements reported e.g. values, percentages, other? Please elaborate.

Q75. Do you agree with the proposed structure of the validation rules? If not, what other aspects should be taken into account. Please elaborate.

Q76. Do you agree with the proposed scope of the reconciliation process? If not, what other aspects should be taken into account. Please elaborate.

Q77. Do you consider that the proposed framework for collateral reconciliation process should take place in parallel with the reconciliation of the loan data? If not, what other aspects should be taken into account. Please elaborate.

Q78. Do you agree with the use of ISO 20022 for the purposes of ensuring common format and common encoding of files exchanged between TRs during the inter-TR reconciliation process? If not, what other common standard would you propose?

Q79. Do you agree with standardising the timeline for finalisation of the inter-TR reconciliation process? Do you agree with the proposed timeline for finalisation of the inter-TR reconciliation process? If not, what would be a most appropriate timeline? What other aspects should be taken into account? Please elaborate.

Q80.   Do you agree with the fields proposed for reconciliation? Which other should be included, or which ones should be excluded? Please elaborate.

Q81.   Do you agree with the proposed tolerance levels? Which other tolerance levels would you suggest? Please elaborate.

Q82.   What other fields are suitable for establishing tolerance levels? What should be the tolerance level for those fields? Should the tolerance level be linearly or logarithmically related to the values? What other aspects should be taken into account? Please elaborate.

Q83.   Do you agree with the proposed logic for rejections messages? Do you agree with the proposed statuses of rejection messages? What other aspects should be taken into account? Please elaborate.

Q84.   Do you agree with the proposed reconciliation statuses? What other aspects should be taken into account? Please elaborate.

Q85.   Do you agree with the proposed end-of-day response to reporting counterparties, report submitting entities and entities responsible for reporting? What other information should be included? What are the potential costs of this information? Please elaborate.

Q86.   What other End-of-day reports can be provided to reporting counterparties, report submitting entities and entities responsible for reporting?

Q87.   Do you agree with the proposed aggregation criteria? What other aspects should be taken into account? Please elaborate.

Q88.   Do you agree with the proposed technical aspects on aggregation of data? What other aspects should be taken into account?

Q89.   Do you agree with the proposed timeline for keeping the data available on the website? Please elaborate.

Q90.   At which point in time do you consider that the additional data elements regarding an SFT will be available for authorities? What are the potential costs of the inclusion of the above mentioned additional data elements? Please elaborate.

Q91.   What other data elements could be generated by the TRs and provided to authorities? Please elaborate.

Q92.   In case a preliminary reconciliation status report is provided, what elements it should include? Please elaborate

Q93.   Considering the proposed termination of the inter-TR reconciliation process at 18:00, when at the earliest can a TR submit the reconciled data to the authorities?

Q94.   What is the optimal delay for provision of SFT position-level reports? What are the potential costs of the generation of above mentioned position reports? What other reports would you suggest to be provided by the TRs? Please elaborate.

Q95.   Do you consider that there should be one position report including both reconciled and non-reconciled data or that there should be two position reports, one containing only reconciled data and the other one containing only non-reconciled data? What are the potential costs of

the separation of above mentioned position reports? What are the benefits of the separation of above mentioned position reports? Please elaborate.

Q96. Do you agree with the proposal? What other aspects should be taken into account? Please elaborate.

Q97. Do you agree with the proposed approach to avoid double counting? If not, what other aspects should be taken into account? Please elaborate.

Q98. Do you agree with the proposed approach for single access per authority irrespective of the number of responsibilities and mandates it has? If not, what other aspects should be taken into account. Please elaborate.

Q99. Do you agree with the proposed way to establish transaction level access to data reported under EMIR? What are the costs of establishing such a level of access? Please elaborate.

Q100. Do you agree with the proposed way to establish transaction level access to data reported under SFTR? What are the costs of establishing such a level of access? Please elaborate.

Q101. Do you agree with the proposed functional approach under EMIR? If not, what other aspects should be taken into account. Please elaborate.

Q102. Do you agree with the proposed territorial approach under SFTR? If not, what other aspects should be taken into account. Please elaborate.

Q103. Do you agree with the proposed levels of access do data reported by branches included in section 6.5? If not, what other aspects should be taken into account. Please elaborate.

Q104. Do you agree with the proposed levels of access do data reported by subsidiaries under EMIR included in sections 6.5.1 – 6.5.5? If not, what other aspects should be taken into account. Please elaborate.

Q105. Do you agree with the proposed levels of access data reported by subsidiaries under SFTR included in sections 6.5.1 –6.5.5? If not, what other aspects should be taken into account. Please elaborate.

Q106. Is there any possible way to ensure the access to TR data from the perspective of commodities? Please elaborate.

Q107. Do you agree with the proposed access levels under SFTR for authorities competent for securities and markets? If not, what other aspects should be taken into account. Please elaborate.

Q108. Do you agree with the proposed access levels under SFTR for authorities supervising CCPs? If not, what other aspects should be taken into account. Please elaborate.

Q109. Do you agree with maintaining the current access levels under EMIR for ESCB issuer of the currency? If not, what other aspects should be taken into account. Please elaborate.

Q110. Do you agree with the proposed access levels under SFTR for ESCB issuer of the currency? If not, what other aspects should be taken into account. Please elaborate.

Q111.   Do you agree with the proposed access levels under SFTR for authorities competent for takeover bids? If not, what other aspects should be taken into account. Please elaborate.

Q112.   Do you agree with the proposed access levels under SFTR for ESMA and ESRB? If not, what other aspects should be taken into account. Please elaborate.

Q113.   Do you agree with the proposed access levels under SFTR for ACER? If not, what other aspects should be taken into account. Please elaborate.

Q114.   Do you agree with the proposed access levels under EMIR for EBA and EIOPA? If not, what other aspects should be taken into account. Please elaborate.

Q115.   Do you agree with the proposed access levels under SFTR for EBA and EIOPA? If not, what other aspects should be taken into account. Please elaborate.

Q116.   Do you agree with the proposed access levels under EMIR for ECB in carrying out its tasks within a single supervisory mechanism? If not, what other aspects should be taken into account. Please elaborate.

Q117.   Do you agree with the proposed access levels under SFTR for ECB in carrying out its tasks within a single supervisory mechanism? If not, what other aspects should be taken into account. Please elaborate.

Q118.   Do you agree with the proposed access levels under EMIR for national authorities competent for the prudential supervision under CRD IV and CRR which participate in the SSM? If not, what other aspects should be taken into account. Please elaborate.

Q119.   Do you agree with the proposed access levels under SFTR for national authorities competent for the prudential supervision under CRD IV and CRR which participate in the SSM? If not, what other aspects should be taken into account. Please elaborate.

Q120.   Do you agree with the proposed access levels under EMIR for national authorities competent for the prudential supervision under CRD IV and CRR which do not participate in the SSM? If not, what other aspects should be taken into account. Please elaborate.

Q121.   Do you agree with the proposed access levels under SFTR for national authorities competent for the prudential supervision under CRD IV and CRR which do not participate in the SSM? If not, what other aspects should be taken into account. Please elaborate.

Q122.   Do you agree with the proposed access levels under EMIR for national supervisory authorities under Solvency II? If not, what other aspects should be taken into account. Please elaborate.

Q123.   Do you agree with the proposed access levels under SFTR for national supervisory authorities under Solvency II? If not, what other aspects should be taken into account. Please elaborate.

Q124.   Do you agree with the proposed access levels under EMIR for national competent authorities under UCITS and AIFMD? If not, what other aspects should be taken into account. Please elaborate.

Q125.   Do you agree with the proposed access levels under SFTR for national competent authorities determined under Solvency II? If not, what other aspects should be taken into account. Please elaborate.

Q126.   Do you agree with the proposed access levels under EMIR for national resolution authorities? If not, what other aspects should be taken into account. Please elaborate.

Q127.   Do you agree with the proposed access levels under EMIR for SRB? If not, what other aspects should be taken into account. Please elaborate.

Q128.   Do you agree with the proposed access levels under SFTR for national resolution authorities? If not, what other aspects should be taken into account. Please elaborate.

Q129.   Do you agree with the proposed access levels under SFTR for SRB? If not, what other aspects should be taken into account. Please elaborate.

Q130.   Are there any other aspects that need to be included in the procedure to be put in place by the trade repository? Please elaborate.

Q131.   Is there any additional information that needs to be included in the templates and tables? Please elaborate.

8 Annex II – 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 III – Cost benefit analysis

Cost-benefit analysis

ESMA's choices in this review are of a pure technical nature and do not imply strategic decisions or policy choices.

ESMA's options are limited to the approach it took to 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 analysed and published by the European Commission http://eur-lex.europa.eu/resource.html?uri=cellar:e186dd0b-89b3-11e3-87da-01aa75ed71a1.0001.01/DOC_3&format=PDF

ESMA is looking forward to the information provided in response to this Consultation Paper to further inform its cost-benefit analysis which will accompany the submission of the technical standards to the European Commission.

10 Annex IV - RTS on registration and extension of registration of TRs under SFTR

COMMISSION DELEGATED REGULATION (EU) No …/…

of [ ]

supplementing Regulation (EU) No 2365/2015 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 2365/2015 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[79], and in particular Article 5 (7) thereof,

Whereas:

(1) 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) No 2365/2015 and for the adequate functioning of the provision of repository functions.

(2) Recital 10 of Regulation (EU) No 2365/2015 indicates that 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 order to minimise additional operational costs for market participants.

(3) 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[80] has proved that the provisions for registration of trade repositories under Regulation (EU) No 648/2012 constitute a sound basis to build the framework

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[79] OJ L 337, 23.12.2015, p. 1.
[80] OJ L 52, 23.2.2013, p. 25.

for registration of trade repositories under Regulation (EU) No 2365/2015. The evolving nature of the industry however requires certain amendments to be undertaken in order to further strengthen this framework.

(4) Regulation (EU) No 2365/2015 specifies particular requirements on trade repositories to verify the completeness and correctness of data reported under Article 4 thereof. Although the validation 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) No 2365/2015, 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. 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 SFTs 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 trade repositories should also ensure the operation separation with regards to staff, systems and procedures between the different business lines in order to demonstrate that the risk of contagion between different services is effectively addressed. The trade repositories should be able to demonstrate that where operational separation of staff cannot be established at the level of each separate business line, the trade repository is able to provide clear and sufficient information on the exact allocation of staff to each of the business lines and to justify how contagion of risks is effectively addressed.

(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) To achieve the objectives of Regulation (EU) No 2365/2015 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)].

(9) By providing detailed information on how data is made available to the public is aggregated, trade repositories fully accomplish their key function of making data available to the public.

(10) 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) No 2365/2015.

(11) It is proportionate and in accordance with the legislator's wish to avoid duplicate requirements, 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 2365/2015.

(12) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(13) In accordance with Article 10 of Regulation (EU) No 1095/2010[81], 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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[81] 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, any reference number and the name of the authority;

   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 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) No 2365/2015 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 to be provided, 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 communication of policies and procedures 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. an indication that there is a documented acknowledgement of the awareness with policies and procedures;

d. an indication of the persons responsible for the maintenance of the policies and procedures;

e. a description of the measures to adopt in the event of a breach of policies and procedures;

f. 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;

    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 description 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 description shall include:

    a. the applicant's internal control policies and the respective procedures that prescribe and guide their consistent and appropriate implementation;

    b. the applicant's policies and respective procedures and manuals regarding the monitoring and evaluation of the adequacy and effectiveness of the applicant's systems;

    c. the applicant's policies and the respective procedures and manual regarding the control and safeguard for the applicant's information processing systems;

    d. the identification of the internal bodies in charge of the evaluation of the 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. Internal Audit Committee composition, competences and responsibilities;

    b. Internal audit function charter, methodologies, standards and procedures;

    c. An explanation how the 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 TR'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) No 2365/2015:

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) No 2365/2015, 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 and assessment regarding the sufficiency and adequacy of knowledge and experience on information technology matters with respect to the members of the senior management and the board.

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 in order to enable the assessment on the adequate experience and knowledge to adequately perform their responsibilities;

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, notably via 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.

3. Any information received by ESMA under paragraph 2 shall only be used for the purpose of registration and compliance at all times with the conditions for registration of the applicant trade repository.

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 as a minimum one person with education and experience in information technology, together with their role and qualifications per role;

    b. a specific description of the information technology staff employed for providing the trade repository services including their role and 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 identification of the dedicated staff members and those members of the staff that are operating under an outsourcing arrangement;

e. details regarding the training and development relevant to the trade repository business, policies and procedures, 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[82] ;

    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[83], 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 2365/2015, and

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[82] OJ L 243, 11.9.2002, p. 1.
[83] OJ L 157, 9.6.2006, p. 87.

c.   positive and negative variations of at least 20 % from the base activity scenario identified.

3. Where 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 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 trade repository:

    a. for illegitimate purposes;

    b. for disclosure of confidential information;

    c. not permitted for commercial use.

2. The latter 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 the 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 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, together with:

(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 or need of the TR that is outsourced;

(iii) methods employed to monitor the service level of the outsourced functions

(iv) measures or actions to be taken in the event of not meeting service level targets; and

(v) 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 operational separation in terms of staff, systems and procedures, between the applicant's trade repository services and other business lines, including in the case that a 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, reporting third parties, non-reporting counterparties and supervisory authorities, 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 user's rights and obligations;

c.   a description of the different categories of access available to 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 information on the access to the trade repository.

Article 19
Verification of completeness and correctness of data

1. 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

   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).

2. The procedures shall include information on how the trade repository ensures compliance with each particular aspect of the verification of the completeness and correctness of data contained in article 19 of RTS.

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, notably reporting counterparties, reporting third parties 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) No 2365/2015 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;

(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 a procedure to ensure that a trade repository from which registration has been withdrawn is orderly substituted

including 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, the original trade repository is orderly substituted 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 recordkeeping 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) No 2365/2015 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 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) No 2365/2015, and the frequency of updates, along with a copy of the 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) No 2365/2015, 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 the 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) No 2365/2015 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 are entitled to 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

An application for extension of registration shall include information, at a minimum, with regards to the following provisions of this Regulation:

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

    b.   Article 2;

    c.   Article 5;

    d.   Article 7, except paragraph d of Article 7(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 paragraph 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 V - 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) No 2365/2015 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[84],

Having regard to Regulation (EU) No 2365/2015 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 (7) 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)[85].

(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

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[84] OJ L 337, 23.12.2015, p. 1.
[85] OJ L 331, 15.12.2010, p. 84.

opinion of the ESMA Securities 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[86] .

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) No 2365/2015 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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[86] 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) No 2365/2015	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 VI – Consolidated amended text of RTS on registration of TRs under EMIR

COMMISSION DELEGATED REGULATION (EU) No …/…

of [   ]

supplementing Regulation (EU) No 2365/2015 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 2365/2015 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[87], and in particular Article 5 (7) 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[88] 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 2365/2015 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 or for the extension of registration under Regulation (EU) No 648/2012, the trade

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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 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 trade repositories should also ensure the operation separation with regards to staff, systems and procedures between the different business lines in order to demonstrate that the risk of contagion between different services is effectively addressed. The trade repositories should be able to demonstrate that where operational separation of staff cannot be established at the level of each separate business line, the trade repository is able to provide clear and sufficient information on the exact allocation of staff to each of the business lines and to justify how contagion of risks is effectively addressed.

(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 access to the data in accordance with the relevant requirements included in RTS [insert reference to Articles 3 and 4 under RTS 151/2013].

(9) By providing detailed information on how data is aggregated and made available to the public, 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)   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.

(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 regulators 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)   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.

(15)   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.

(16)   In order to carry out its authorisation duties effectively, ESMA should receive all information from trade repositories, related third parties and third parties to whom the trade repositories have outsourced operational functions and activities. Such information is necessary to assess or complete the assessment of the application for registration and the documentation therein.

(17)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(18)   In accordance with Article 10 of Regulation (EU) No 1095/2010[89], 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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[89] OJ L 331, 15.12.2010, p. 84.

HAS ADOPTED THIS REGULATION

Article 1
Identification, legal status and types of derivatives

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 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, any reference number and the name of the authority;

   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 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 Articles 56 to 59 of Regulation (EU) No 648/2012 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 to be provided, 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 communication of policies and procedures 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. an indication that there is a documented acknowledgement of the awareness with policies and procedures;

d. an indication of the persons responsible for the maintenance of the policies and procedures;

e. a description of the measures to adopt in the event of a breach of policies and procedures;

f. 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;

    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 description 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 description shall include:

a. the applicant's internal control policies and the respective procedures that prescribe and guide their consistent and appropriate implementation;

b. the applicant's policies and respective procedures and manuals regarding the monitoring and evaluation of the adequacy and effectiveness of the applicant's systems;

c. the applicant's policies and the respective procedures and manual regarding the control and safeguard for the applicant's information processing systems;

d. the identification of the internal bodies in charge of the evaluation of the 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. Internal Audit Committee composition, competences and responsibilities;

b. Internal audit function charter, methodologies, standards and procedures;

c. an explanation how the 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 TR'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) No 648/2012:

b. 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) No 648/2012, 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 and assessment regarding the sufficiency and adequacy of knowledge and experience on information technology matters with respect to the members of the senior management and the board.

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 in order to enable the assessment on the adequate experience and knowledge to adequately perform their responsibilities;

    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, notably via 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.

3. Any information received by ESMA under paragraph 2 shall only be used for the purpose of registration and compliance at all times with the conditions for registration of the applicant trade repository.

Article 10
Staffing policies and procedures

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

c. 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 as a minimum one person with education and experience in information technology, together with their role and qualifications per role;

c. a specific description of the information technology staff employed for providing the trade repository services including their role and qualifications of each individual;

d. a description of the roles and qualifications of each individual who is responsible for internal audit, internal controls, compliance and risk assessment;

e. the identification of the dedicated staff members and those members of the staff that are operating under an outsourcing arrangement;

f. details regarding the training and development relevant to the trade repository business, policies and procedures, 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 standards90 ;

    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 accounts91, 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 648/2012, and

    c. positive and negative variations of at least 20 % from the base activity scenario identified.

3. Where 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;

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90 OJ L 243, 11.9.2002, p. 1
91 OJ L 157, 9.6.2006, p. 87.

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 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 trade repository:

   a. for illegitimate purposes;

b. for disclosure of confidential information;

c. not permitted for commercial use.

2. The latter 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 the 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 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, together with:

   (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 or need of the TR that is outsourced;

   (iii) methods employed to monitor the service level of the outsourced functions

   (iv) measures or actions to be taken in the event of not meeting service level targets; and

   (v) 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 operational separation in terms of staff, systems and procedures, between the applicant's trade repository services and other business lines, including in the case that a 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, reporting third parties, non-reporting counterparties and supervisory authorities, 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 user's rights and obligations;

c. a description of the different categories of access available to 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 information on the access to the trade repository.

Article 19
Verification of completeness and correctness of data

1. 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

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).

2. The procedures shall include information on how the trade repository ensures compliance with each particular aspect of the verification of the completeness and correctness of data.

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, notably reporting counterparties, reporting third parties 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 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;

(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 a procedure to ensure that a trade repository from which registration has been withdrawn is orderly substituted including 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, the original trade repository is orderly substituted 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 recordkeeping 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 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 the 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 the 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.

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 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 25
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 26
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

13 Annex VII - 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) 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) No 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[92], and in particular Article 4(10) thereof,

Whereas: [Recitals to be completed once the enacting terms are defined]

HAS ADOPTED THIS REGULATION:

Article 1

Data standards and formats for SFT reports

All details to be included in SFT reports pursuant to Article 4(1) of Regulation (EU) No 2015/2365 shall be submitted in accordance with the standards and formats specified in Tables 1-5 of the Annex, 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:

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[92] OJ L 337, 23.12.2015, p. 1

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.

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 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 SFTs other that those referred to in point (i), 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 shall be specified in accordance with paragraphs 2 to 4.

2. In the case of repurchase transactions and sell-buy back/buy-sell back transactions, 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 agrees to sell them at a specified price on a future date of closing or forward leg of the trade, shall be identified as collateral taker. The other counterparty shall be identified as the collateral giver.

3. In the case of securities or commodities borrowing and securities and commodities lending, the counterparty that lends the securities or commodities that are 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 other counterparty shall be identified as the collateral giver.

4. In the case of margin lending, the counterparty to which credit is extended in exchange for collateral shall be identified as the collateral giver. The counterparty that provides the credit in exchange for collateral shall be identified as the collateral taker.

Article 5

Frequency of SFT reports

1. All reports specified under Article 1(2) of the RTS shall be reported as they occur and taking into account the time limit foreseen under Article 4 of SFTR.

2. Where a counterparty collateralises its SFTs with a collateral basket, it shall report at least the details required in Field 9 – 11 of Table 2 of Annex when submitting the first report for a new SFT. The counterparty shall modify Fields 65-90 of Table 2 with the complete and accurate details of all individual components of the collateral basket for the given SFT as soon as possible and no later than the value date, as specified in Field 13 of Table 2.

3. Where a counterparty collateralises its SFTs with individual collateral components it shall report at least the details required in Fields 65 – 90 of Table 2 of Annex when submitting the first report for a new SFT, unless the individual components are not known by the reporting deadline, in which case the counterparty shall report the complete and accurate details of all individual components as soon they become available and no later than the value date, as specified in Field 13 of Table 2.

4. A counterparty shall report the details of the collateral data on each working day after it has first reported the SFT as 'New' with action types "Modification of business terms" or "Other Modification" 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 the total amount of margin posted or received for all cleared SFT on each working day after it has first reported the SFT as 'New' 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.

Article X

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

No	Field	Format
5	Sector of the reporting counterparty	Taxonomy for Financial Counterparties: 'C' - Credit institution authorized in accordance with Directive 2013/36/EU or Regulation (EU) No 1024/2013 'F' - Investment firm authorized in accordance with Directive 2014/65/EU 'I' - Insurance undertaking authorized in accordance with Directive 2009/138/EC 'L' - AIF managed by AIFMs authorized or registered in accordance with Directive 2011/61/EU 'O' - Institution for occupational retirement provision authorized or registered in accordance with Directive 2003/41/EC 'P' - Central counterparty authorized in accordance with Regulation (EU) No 648/2012 'R' - Reinsurance undertaking authorized in accordance with Directive 2009/138/EC 'S' - Central securities depository authorized in accordance with Regulation (EU) No 909/2014 'U' - UCITS and its management company, authorized in accordance with Directive 2009/65/EC 'T'- entity specified in the Article 3(3)(d)(i) of [SFTR] Taxonomy for Non-financial Counterparties. The categories below correspond to the main sections of NACE classification as defined in Regulation (EC) No 1893/2006 '1' - Agriculture, forestry and fishing '2' - Mining and quarrying '3' - Manufacturing '4' - Electricity, gas, steam and air conditioning supply '5' - Water supply, sewerage, waste management and remediation activities '6' - Construction '7' Wholesale and retail trade, repair of motor vehicles and motorcycles '8' - Transportation and storage '9' - Accommodation and food service activities '10' - Information and communication '11' - Financial and insurance activities '12' - Real estate activities '13' - Professional, scientific and technical activities '14' - Administrative and support service activities '15' - Public administration and defence; compulsory social security '16' - Education '17' - Human health and social work activities '18' - Arts, entertainment and recreation '19' - Other service activities '20' - Activities of households as employers; undifferentiated goods – and services –producing activities of households for own use '21' - Activities of extraterritorial organizations and bodies

No	Field	Format
6	Investment fund classification	'????'[93] - ETF '????' - MMF 'OTHR' - Other
7	Country of the branch of the reporting counterparty	ISO 3166-1 alpha-2 country code 2 alphabetic characters
8	Country of the branch of the other counterparty	ISO 3166-1 alpha-2 country code 2 alphabetic characters
9	Counterparty side	'????' - Collateral taker '????' - Collateral giver
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.
12	Beneficiary	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code. Client code (up to 50 alphanumeric characters).
13	Tri-party agent identifier	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
14	Broker	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
15	Clearing member	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
16	CSD participant or indirect participant	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
17	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)	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.
2	Report tracking number	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.
3	Reporting business day	ISO 8601 date in the format YYYY-MMDD

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[93] '????' is used in this table of fields to represent the codes that are not yet defined. The specific 4-letter codes compliant with ISO 20022 specifications will be added in final draft ITS.

No	Field	Format
4	Type of SFT	'????'[94] - securities or commodities lending or securities or commodities borrowing '????' - buy-sell back transaction or sell-buy back transaction '????' - repurchase transaction '????' - 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	'????' - MRA '????' - GMRA '????' - MSLA '????' - GMSLA '????' - ISDA '????' - Deutscher Rahmenvertrag für Wertpapierpensionsgeschäfte '????' - China Bond Repurchase Master Agreement, Korea Financial Investment Association (KOFIA) Standard Repurchase Agreement '????' - Investment Industry Regulatory Organization of Canada (IIROC) Repurchase/Reverse Repurchase Transaction Agreement '????' - Convention-Cadre Relative aux Operations de Pensions Livrees, '????' - Japanese Master Agreement on the Transaction with Repurchase Agreement of the Bonds '????' - Contrato Marco de compraventa y Reporto de valores '????' - Overseas Securities Lending Agreement (OSLA) '????' - Master Equity and Fixed Interest Stock Lending Agreement (MEFISLA) '????' - Gilt Edged Stock Lending Agreement (GESLA) '????' - Korean Securities Lending Agreement (KOSLA) '????' - Deutscher Rahmenvertrag für Wertpapierdarlehen '????' - Australian Masters Securities Lending Agreement (AMSLA) '????' - Japanese Master Agreement on Lending Transaction of Bonds '????' - Japanese Master Agreement on the Borrowing and Lending Transactions of Share Certificates Or 'OTHR' if the master agreement type is not included in the above list

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[94] '????' is used in this table of fields to represent the codes that are not yet defined. The specific 4-letter codes compliant with ISO 20022 specifications will be added in final draft ITS.

No	Field	Format
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 interest collateral arrangement 'SIUR' - securities interest with the right of use
21	Open term	'true' 'false'
22	Termination optionality	???? - evergreen ???? - extendable
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	The code representing day count convention: 'A001' - IC30360ISDAor30360AmericanBasicRule 'A002' - IC30365 'A003' - IC30Actual 'A004' - Actual360 'A005' - Actual365Fixed 'A006' - ActualActualICMA 'A007' - IC30E360orEuroBondBasismodel1 'A008' - ActualActualISDA 'A009' - Actual365LorActuActubasisRule 'A010' - ActualActualAFB 'A011' - IC30360ICMAor30360basicrule 'A012' - IC30E2360orEurobondbasismodel2 'A013' - IC30E3360orEurobondbasismodel3 'A014' - Actual365NL Or up to 35 alphanumeric characters if the day count convention is not included in the above list.
25	Floating rate	The code representing the floating rate index 'EONA' - EONIA 'EONS' - EONIA SWAP

No	Field	Format
		'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
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 repo 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

No	Field	Format
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.
Fields 33-34 shall be populated for each floating rate adjustment		
33	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.
34	Rate date	ISO 8601 date in the format YYYY-MM-DD
35	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.
36	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.
37	Principal amount currency	ISO 4217 Currency Code, 3 alphabetic characters
38	Type of asset	'????' - Securities '????' - Commodities
39	Security identifier	ISO 6166 ISIN 12 character alphanumeric code
Where a commodity was subject of the SFT it shall be classified in fields 40-42		
40	Base product	Only values in the 'Base product' column of the classification of commodities derivatives table are allowed.
41	Sub - product	Only values in the 'Sub - product' column of the classification of commodities derivatives table are allowed are allowed.
42	Further sub - product	Only values in the 'Further sub - product' of the classification of commodities derivatives table are allowed.
43	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.

No	Field	Format
44	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, '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,
45	Currency of nominal amount	ISO 4217 Currency Code, 3 alphabetic characters
46	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.
47	Forward 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.
48	Price currency	ISO 4217 Currency Code, 3 alphabetic characters
49	Trade amount on value date (spot leg)	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.
50	Trade amount on maturity date (forward leg)	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
51	Trade amount currency	ISO 4217 Currency Code, 3 alphabetic characters
52	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.
53	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.
54	Rebate Rate	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100".
55	Lending Fee	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100".
56	Type of contract	'true' 'false'
57	Outstanding 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.
58	Currency of outstanding loan	ISO 4217 Currency Code, 3 alphabetic characters
59	Total margin financing available	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.
60	Remaining margin financing balance available	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.
61	Available margin financing currency	ISO 4217 Currency Code, 3 alphabetic characters
62	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.
63	Short market value currency	ISO 4217 Currency Code, 3 alphabetic characters
Collateral data		
Where specific collateral was used, the attributes listed in fields 65-82 and 84 shall be repeated for each component of collateral, if applicable		
64	Uncollateralised SL flag	'true' 'false'
65	Type of collateral component	'????' - Securities '????' - Commodities (only for repos and buy-sell backs) '????' - Cash (only for securities and commodities borrowing and lending and for margin lending)
Where cash was used as a collateral it shall be described in fields 66-67		
66	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.
67	Cash collateral currency	ISO 4217 Currency Code, 3 alphabetic characters
68	Identification of a collateral component	ISO 6166 ISIN 12 character alphanumeric code

No	Field	Format
69	Classification of a collateral component	ISO 10692 CFI, 6 characters alphabetical code
Where a commodity was used as a collateral it shall be classified in fields 70-72		
70	Base product	Only values in the 'Base product' column of the classification of commodities derivatives table are allowed.
71	Sub - product	Only values in the 'Sub - product' column of the classification of commodities derivatives table are allowed are allowed.
72	Further sub - product	Only values in the 'Further sub - product' of the classification of commodities derivatives table are allowed.
73	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.
74	Currency of collateral nominal amount	ISO 4217 Currency Code, 3 alphabetic characters
75	Price currency	ISO 4217 Currency Code, 3 alphabetic characters
76	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.
77	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.
78	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.
79	Collateral quality	'????' - Investment grade '????' - Non-investment grade '????' - Non-rated
80	Maturity of the security	ISO 8601 date in the format YYYY-MM-DD
81	Jurisdiction of the issuer	ISO 3166-1 alpha-2 country code 2 alphabetic characters
82	LEI of the issuer	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
83	Availability for collateral re-use	'true' 'false'
84	Collateral re-use	'true' 'false'
85	Portfolio leverage ratio type	Up to 35 alphanumeric characters if the day count convention is not included in the above list.
86	Current portfolio leverage ratio	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100".
87	Portfolio leverage ratio limit	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100".
88	Funding sources	'????' - repos '????' - BSB

No	Field	Format
		'????' - free credits '????' - proceeds from customer short sales '????' - proceeds from broker short sales '????' - unsecured borrowing
89	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.
90	Currency of market value of funding sources	ISO 4217 Currency Code, 3 alphabetic characters
Field 91 shall be populated in the case where collateral pool was used. The explicit collateral allocation for SFTs transacted against a collateral pool should be reported in fields 65-90 when available		
91	Collateral basket identifier	ISO 6166 ISIN 12 character alphanumeric code, or 'NTAV'
92	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.
93	Action type	'????' - New '????' - Modification of business terms '????' - Other modification '????' - Error '????' - Correction '????' - Termination / Early Termination
94	Level	'T' - Transaction 'P' - 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	Reporting business day	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	Other counterparty	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code.
6	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.

No	Field	Format
7	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.
8	Currency of the initial margin posted	ISO 4217 Currency Code, 3 alphabetic characters
9	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.
10	Currency of the variation margins posted	ISO 4217 Currency Code, 3 alphabetic characters
11	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.
12	Currency of the initial margin received	ISO 4217 Currency Code, 3 alphabetic characters
13	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.
14	Currency of the variation margins received	ISO 4217 Currency Code, 3 alphabetic characters
15	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.
16	Currency of the excess collateral posted	ISO 4217 Currency Code, 3 alphabetic characters
17	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.
18	Currency of the excess collateral received	ISO 4217 Currency Code, 3 alphabetic characters
19	Action Type	'????'[95] – New '????' - Other modification '????' - Error '????' - Correction

[95] '????' is used in this table of fields to represent the codes that are not yet defined. The specific 4-letter codes compliant with ISO 20022 specifications will be added in final draft ITS.

Table 4

Re-use 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	Reporting business day	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	Type of collateral component	'????'[96] - Securities '????' - Cash
Fields 6-8 should be repeatable for each security		
6	Collateral component	ISO 6166 ISIN 12 character alphanumeric code
7	Value of re-used 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.
8	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.
9	Reinvestment Rate	Up to 11 numeric characters including up to 10 decimals expressed as percentage where 100% is represented as "100".
Fields 10-12 should be repeatable for each cash collateral component		
10	Re-invested cash	'????' - registered money market fund '????' - any other commingled pool '????' - the repo market '????' - direct purchase of securities 'OTHR' - other
11	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.
12	Re-invested cash currency	ISO 4217 Currency Code, 3 alphabetic characters
13	Action type	'????' - New '????' - Other modification '????' - Error '????' - Correction

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[96] '????' is used in this table of fields to represent the codes that are not yet defined. The specific 4-letter codes compliant with ISO 20022 specifications will be added in final draft ITS.

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'
	'DIRY'- Dairy	
	'FRST' - Forestry	
	'SEAF' - Seafood	
	'LSTK' - Livestock	
	'GRIN' - Grain	'MWHT' - Milling Wheat
'NRGY' –'Energy	'ELEC' -Electricity	'BSLD' - Base load 'FITR' - Financial Transmission Rights 'PKLD' - Peak load 'OFFP' - Off-peak 'OTHR' - Other
	'NGAS' - Natural Gas	'GASP' - GASPOOL 'LNGG' - LNG 'NBPG' - NBP 'NCGG' - NCG 'TTFG' - TTF
	'OILP' -Oil	'BAKK' - Bakken 'BDSL' - Biodiesel 'BRNT' - Brent 'BRNX' - Brent NX 'CNDA' - 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
	'COAL'- Coal 'INRG' - Inter Energy 'RNNG' - Renewable energy 'LGHT' - Light ends 'DIST' - Distillates	
'ENVR' - Environmental	'EMIS' - Emissions	'CERE' - CER 'ERUE' - ERU 'EUAE' - EUA 'EUAA' – EUAA 'OTHR'-Other
	'WTHR' - Weather 'CRBR' - Carbon related'	
'FRGT' -'Freight'	'WETF' - Wet	'TNKR' -Tankers
	'DRYF' - Dry	'DBCR' - Dry bulk carriers
	'CSHP' - Containerships	
'FRTL' -'Fertilizer'	'AMMO' - Ammonia 'DAPH' - DAP (Diammonium Phosphate) 'PTSH' - Potash 'SLPH' - Sulphur 'UREA' - Urea 'UAAN' - UAN (urea and ammonium nitrate)	
'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	
'POLY' - Polypropylene'	'PLST' - Plastic	
'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 VIII - RTS on the details of reports to be reported to TRs under SFTR

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing Regulation (EU) No 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) No 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[97], and in particular Article 4(9) thereof,

Whereas: [Recitals to be completed once the enacting terms are defined]

HAS ADOPTED THIS REGULATION:

Article 1

SFT details to be reported pursuant to Article 4(1) of Regulation (EU) 2015/2365

1. An SFT transaction report pursuant to Article 4(1) of Regulation (EU) No 2015/2365 shall include complete and accurate details referred to in Table 1 and Table 2 of the Annex to this Regulation that pertain to the SFT concerned.

2. When reporting the conclusion of a new SFT, the counterparty shall make this report by specifying in Field 93 in Table 2 of the Annex the action type "New''. All subsequent reports pertaining to this SFT shall be reported with other relevant action types specified in Field 93 in Table 2 of the Annex.

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[97] OJ L 337, 23.12.2015, p. 1

Article 2

Cleared trades

1. Where an SFT whose details have already been reported pursuant to Article 4 of Regulation (EU) No 2015/2365 is subsequently cleared by a central counterparty (CCP), that SFT shall be reported as terminated by specifying in Field 93 in Table 2 of the Annex the action type "Termination/Early Termination" and new SFTs resulting from clearing shall be reported.

2. A counterparty shall specify in the reports for these new SFTs resulting from clearing the UTI that was assigned to the original SFT before it was cleared. This information shall be provided in Field 2 in Table 2 of the Annex.

3. Where an SFT is both concluded on a trading venue and cleared on the same day, only the contracts resulting from clearing shall be reported.

4. A counterparty shall report the details included in Table 3 of the Annex of the margin posted or received for each cleared SFT reported to a trade repository.

Article 3

Collateral reporting

1. Where a counterparty collateralises its SFTs with individual collateral components, it shall specify complete and accurate details of all individual collateral components as specified in the fields 65-90 of Table 2 of Annex when reporting this SFT for the first time with the action type 'New' in Field 93 of Table 2 of the Annex, unless the individual components are not known by the reporting deadline, in which case the counterparty shall report with action type " Modification of business terms" or "Other modification" the complete and accurate details of all individual components within the timeline specified in Article 5(3) of the ITS .

2. Where a counterparty collateralises its SFTs with a collateral basket, it shall specify in field 91 of Table 2 of Annex the identifier of the collateral basket to which this SFT relates when reporting this SFT for the first time with the action type 'New' in Field 93 in Table 2 of the Annex. The counterparty shall also specify complete and accurate details of all individual components constituting the collateral basket in the fields 65-90 of Table 2 of Annex using action type 'Modification of business terms" or "Other modification", as appropriate,' in Field 93 in Table 2 of the Annex within the timeline specified in Article 5(2) of the ITS.

Article 4

Collateral re-use reporting

1. In case where the collateral is distinguishable from the other assets, a counterparty shall report in Table 4 of the Annex details of reuse on individual financial instrument basis.

2. When making a report under the requirements of paragraph 1, a counterparty shall provide information about the overall re-use of the collateral by that counterparty.

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) No 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

	Field	**Details to be reported**
1	Reporting timestamp	Date and time of submission of the report to the trade repository.
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.
3	Reporting Counterparty	Unique code identifying the reporting counterparty
4	Nature of the reporting counterparty	Indicates if the reporting counterparty is a financial or non-financial counterparty
5	Sector of the reporting counterparty	Nature of the reporting counterparty's company 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.
6	Investment fund classification	In the case where the reporting counterparty is a UCIT or AIF, an indication whether it is an ETF or a MMF.
7	Country of the branch of the reporting counterparty	The code of country where the branch through which the SFT was concluded is located.
8	Country of the branch of the other counterparty	The code of country where the branch through which the SFT was concluded is located.
9	Counterparty side	Identifies whether the reporting counterparty is a collateral giver or a collateral taker in accordance with the Article 4 of the ITS.

	Field	Details to be reported
10	Entity responsible for the report	In the case where a financial counterparty is responsible for reporting on behalf of both counterparties in accordance with Article 4(3) of SFTR, the unique code identifying that counterparty. In the case where a management company is responsible for reporting on behalf of a UCITS in accordance with Article 4(3) of SFTR, the unique code identifying that management company. In the case where an AIFM is responsible for reporting on behalf of an AIF in accordance with Article 4(3) of SFTR, the unique code identifying that AIFM.
11	Other counterparty	Unique code identifying the entity with which the reporting counterparty concluded the SFT
12	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.
13	Tri-party agent identifier	Unique code identifying the third party that administers the SFT. When no tri-party agent is used, this information shall not be provided.
14	Broker	The unique code of the entity that acts as intermediary for the reporting counterparty without becoming a counterparty to the SFT itself.
15	Clearing Member	In the case where the trade is cleared, the responsible clearing member shall be identified in this field by a unique code
16	CSD participant or indirect participant	The unique code of the - CSD participant or indirect participant that settles on behalf of the deliverer; or - CSD participant or indirect participant that settles on behalf of the receiver when the reporting; This field is not applicable for commodities.
17	Agent lender	The unique code of the agent lender involved in the securities lending transaction.

Table 2

Loan and collateral Data

	Field	Details to be reported
1	Unique Transaction Identifier (UTI)	The global unique reference assigned to the SFT. In the case where multiple transactions are collateralised with a specific collateral, this field should be repeatable for the action type "Collateral update"
2	Report tracking number	In the case of transactions resulting from clearing, UTI of original bilateral transaction. 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.
3	Reporting business day	Business day for which the report was submitted to the trade repository
4	Type of SFT	Specifies the type of SFT transaction as defined under Article 3(7)-3(10) of SFTR
5	Cleared	Indicates, whether central clearing has taken place.
6	Clearing timestamp	Time and date when clearing took place.
7	CCP	In the case of a contract that has been cleared, the unique code for the CCP that has cleared the contract
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.
9	Master agreement type	Reference to master agreement under which the counterparties concluded a documented SFT.
10	Other master agreement type	Name of the master agreement type in the case it is not specified in the Field 19.
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.)
12	Execution timestamp	Date and time when the SFT was executed.
13	Value date (Start date)	Date on which the counterparties contractually agree the exchange of securities or commodities versus collateral for the opening leg (spot leg) of the secured financing transaction. In the case of rollover of open term repurchase transactions, this is the date on which the rollover settles, even if no exchange of cash takes place.
14	Maturity date (End date)	Date on which the counterparties contractually agree the exchange of securities or commodities versus collateral for

	Field	Details to be reported
		the closing leg (forward leg) of the secured financing transaction. This information shall not be reported for open term repos.
15	Termination date	Termination date in the case of a full early termination of the reported SFT.
16	Minimum notice period	The minimum number of business days that one of the counterparties has to inform about the termination of the transaction.
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.
18	General collateral Indicator	Indication whether the secured financing transaction is subject to a general collateral arrangement. -'GENE' shall be populated for general collateral. General collateral specifies a collateral arrangement for a repurchase transaction in which the security lender may choose the security to provide as collateral with the cash provider 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 repurchase transaction in which the buyer requests a specific security commodity (individual ISIN) to be provided by the seller
19	DBV indicator	This field specifies whether the transaction was settled using the CREST Delivery-by-Value (DBV) mechanism
20	Method used to provide collateral	Indication whether the collateral is subject to a title transfer collateral arrangement, a securities interest collateral arrangement, or a securities interest with the right of use. Where more than one method was used to provide collateral, the main method should be specified in this field
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.
22	Termination optionality	Indication whether the counterparties to the transaction have agreed to an evergreen or extendable repo.
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.
24	Day count convention	The method for calculating the accrued interest on the principal amount for a fixed repo rate
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.

		Field	Details to be reported
26		Floating rate reference period - time period	Time period describing reference period of the floating rate.
27		Floating rate reference period - multiplier	Multiplier of the time period describing reference period of the floating rate.
28		Floating rate payment frequency - time period	Time period describing frequency of payments for the floating rate.
29		Floating rate payment frequency - multiplier	Multiplier of the time period describing frequency of payments for the floating rate.
30		Floating rate reset frequency - time period	Time period describing frequency of the floating rate resets.
31		Floating rate reset frequency - multiplier	Multiplier of the time period describing frequency of the floating rate resets
32		Spread	Spread for the floating rate expressed in basis points
Fields 33-34 shall be populated for each floating rate adjustment			
33		Adjusted rate	This reporting attribute specifies the rate as determined by the rate schedule.
34		Rate date	This reporting attribute specifies date as of which the rate is effective.
35		Principal amount on value date	Cash value to be settled as of the value date of the transaction.
36		Principal amount on maturity date	Cash value to be settled as of the maturity date of the transaction.
37		Principal amount currency	Currency of the principal amount
38		Type of asset	Indication of the type of asset subject of the SFT
39		Security identifier	Identifier of the security subject of the SFT. This field is not applicable for commodities
Where a commodity was subject of the SFT it shall be classified in fields 40-42			
40		Base product	The base product as specified in the classification of commodities table.
41		Sub - product	The Sub - Product as specified in the classification of commodities table. Field requires a Base product.
42		Further sub product	The further sub - product as specified in the classification of commodities table. Field requires a Sub - product.
43		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).

	Field	Details to be reported
		In the case of other securities or commodities, quantity shall be specified in this field.
44	Unit of measure	Unit of measure in which the quantity is expressed. This field is applicable to commodities.
45	Currency of nominal amount	In the case where nominal amount is provided, the currency of the nominal amount shall be populated in this field.
46	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.
47	Forward price	Price of the security or commodity used to calculate the trade amount for the forward leg of the buy-sell back.
48	Price currency	The currency in which the security or commodity price is denominated.
49	Trade amount on value date (spot leg)	Cash value to be settled as of the value date of the transaction. The assumption is that the trade amount is equal to the settlement amount.
50	Trade amount on maturity date (forward leg)	Cash value to be settled as of the maturity date of the transaction. The assumption is that the trade amount is equal to the settlement amount.
51	Trade amount currency	Currency of trade amount
52	Loan value	This reporting attribute specifies loan value, i.e. the quantity or nominal amount multiplied by the price
53	Market value	Market value of the securities or commodifies on loan or borrowed
54	Rebate rate	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.
55	Lending fee	Fee that the borrower of the security or commodity pays to the lender.
56	Type of contract	Indication whether the borrower has exclusive access to borrow from the lender's securities portfolio
57	Outstanding loan	Total amount of loans (excluding short sale proceeds)
58	Currency of outstanding loan	The currency of outstanding loan
59	Total margin financing available	Total amount of margin financing made available to clients
60	Remaining margin financing balance available	Remaining amount of margin financing available (i.e. excluding any outstanding margin loan amount)
61	Available margin financing currency	The currency of free credit balances
62	Short market value	Market value of short position, if any.
63	Short market value currency	The currency of short market value.

	Field	**Details to be reported**
Collateral data		
Where specific collateral was used, the attributes listed in fields 65-82 and 84 shall be repeated for each component of collateral, if applicable		
64	Uncollateralised SL flag	Indicates whether the securities lending transaction is uncollateralised
65	Type of collateral component	Indication of the type of collateral component
Where cash was used as a collateral it shall be described in fields 66-67		
66	Cash collateral amount	Amount of funds provided as collateral for borrowing the securities or commodities.
67	Cash collateral currency	Currency of the cash collateral
68	Identification of a collateral component	Identifier of the security used as collateral. This field is not applicable for commodities
69	Classification of a collateral component	CFI code of the security used as collateral. This field is not applicable for commodities
Where a commodity was used as a collateral it shall be classified in fields 70-72		
70	Base product	Base product as specified in the classification of commodities table.
71	Sub - product	The sub - product as specified in the classification of commodities table. Field requires a Base product.
72	Further sub - product	The further sub - product as specified in the classification of commodities table. Field requires a Sub product.
73	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
74	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.
75	Price currency	Currency of the price of the collateral component
76	Price per unit	Price of unit of collateral component, including accrued interest for interest-bearing securities, used to value the security or commodity .
77	Collateral market value	Fair value of the individual collateral component expressed in price currency.
78	Haircut or margin	Collateral haircut, a risk control measure applied to underlying collateral whereby the value of that underlying collateral is calculated as the market value of the assets reduced by a certain percentage. In the case of margin lending, collateral haircut or margin requirement, a risk control measure applied to the entire collateral portfolio whereby the value of that underlying collateral is calculated as the market value of the assets reduced by a certain percentage.

	Field	Details to be reported
		Only actual values, as opposed to estimated or default values are to be reported for this attribute.
79	Collateral quality	Code that classifies the risk of the security used as collateral
80	Maturity of the security	Maturity of the security used as collateral This field is not applicable for commodities
81	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
82	LEI of the issuer	LEI of the issuer of the security used as collateral. This field is not applicable for commodities
83	Availability for collateral re-use	Indication whether the buyer can re-use the collateral
84	Collateral re-use	Indication whether collateral has been re-used.
85	Portfolio leverage ratio type	This reporting attribute specifies the type of leverage ratio used and its definition or formula.
86	Current portfolio leverage ratio	Existing limit or thresholds to leverage ratio.
87	Portfolio leverage ratio limit	Current value of the leverage ratio.
88	Funding sources	Funding sources used to finance margin loans.
89	Market value of the funding sources	Market value of funding sources referenced above.
90	Currency of market value of funding sources	The currency of market value of funding sources.
Field 91 shall be populated in the case where collateral pool was used. The explicit collateral allocation for SFTs transacted against a collateral pool should be reported in fields 65-90 when available		
91	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'.
92	Portfolio code	If the transaction pertains to a portfolio of transactions for which margin 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 under EMIR, the portfolio code should be the same as reported under EMIR.
93	Action type	Whether the report contains: - a SFT reported for the first time, in which case it will be identified as 'new'; - a modification to the business terms of a previously reported SFT in which case it will be identified as 'Modification of business terms'. This includes an update to

	Field	Details to be reported
		a previous report that is showing a position in order to reflect new trades included in that position; - a modification of the details of a previously reporteed SFT other than the business terms, in which case it will be identified as 'Other modification' - a cancellation of a wrongly submitted entire report in case the contract 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'; - 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'; - 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';
94	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.

Table 3

Margin Data

	Field	Details to be reported
1	Reporting timestamp	Date and time of submission of the report to the trade repository.
2	Reporting business day	Business day for which the report was submitted to the trade repository
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.
4	Reporting Counterparty	Unique code identifying the reporting counterparty
5	Other counterparty	Unique code identifying the entity with which the reporting counterparty concluded the SFT
6	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.
7	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.
8	Currency of the initial margin posted	Specify the currency of the initial margin posted.
9	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.
10	Currency of the variation margins posted	Specify the currency of variation margin posted.
11	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.
12	Currency of the initial margin received	Specify the currency of the initial margin received.
13	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.
14	Currency of the variation margins received	Specify the currency of the variation margin received.
15	Excess collateral posted	Value of collateral posted in excess of the required collateral.
16	Currency of the excess collateral posted	Specify the currency of the excess collateral posted.
17	Excess collateral received	Value of collateral received in excess of the required. Collateral
18	Currency of the excess collateral received	Specify the currency of the excess collateral received.
19	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 'Other modification' - 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';

Table 4

Re-use Data

No	Field	Details to be reported
1	Reporting timestamp	Date and time of submission of the report to the trade repository.
2	Reporting business day	Business day for which the report was submitted to the trade repository
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.
4	Reporting counterparty	Unique code identifying the reporting counterparty.
5	Type of collateral component	Indication of the type of collateral component.
Fields 6-8 should be repeatable for each security		
6	Collateral component	Identifier of the security used as collateral.
7	Value of re-used collateral	Value of the collateral re-used.
8	Estimated reuse of collateral	In the case when the collateral re-use cannot be defined at SFT transaction level, an estimate percentage of re-use of the value for a given security.
9	Reinvestment Rate	The average interest rate received on cash collateral reinvestment by the lender for reinvestment of cash collateral
Fields 10-12 should be repeatable for each cash collateral component.		
10	Re-invested cash	Determines the type of re-investment.
11	Re-invested cash amount	Amount of the re-invested cash in a given currency.
12	Re-invested cash currency	Currency of the re-invested cash.
13	Action Type	Whether the report contains: - a new re-use balance, in which case it will be identified as 'New'; - a modification of the details of the re-use in which case it will be identified as 'Other modification' - 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';

15 Annex IX - RTS on public data, details of SFTs, operational standards for data collection, data aggregation and comparison

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing Regulation (EU) No 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 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) No 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[98], and in particular Article 12(3) thereof,

Whereas: [Recitals to be completed once the enacting terms are defined]

HAS ADOPTED THIS REGULATION:

Details of SFTs for authorities

Article 1

Details of SFTs to be provided to authorities

1. A trade repository shall provide access directly and immediately, including where delegation under Article 28 of Regulation 1095/2010 exists, to the entities listed in Article 12(2) of Regulation (EU) No 2365/2015 to the details of the SFTs in accordance with Article 12(3)(c) SFTR of this Regulation, as well as the aggregated positions calculated in

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accordance with Article 2. These details shall be provided in electronic and machine readable form and common XML template in accordance with ISO 20022 methodology.

2. A trade repository shall provide the entities listed in Article 12(2) of Regulation 2365/2015 transaction level data on the rejections, following the performance of data validations detailed in Article 3 of this Regulation and the reconciliation following the performance of the reconciliation process detailed in Article 4 of this Regulation, of the reported SFTs.

Article 2

Details of aggregate positions in SFT to be provided to authorities

1. A trade repository shall provide position level data to the entities listed in Article 12(2) of Regulation 2365/2015 in electronic and machine readable form and common XML template in accordance with ISO 20022 methodology on:

    a. Reconciliation category, following the performance of reconciliation process detailed in Article 4 of this Regulation of the aggregated SFTs;

    b. Gross exposure between a pair of counterparties, based on the relevant principal amounts;

    c. Net exposure between a pair of counterparties, based on the relevant principal amounts;

    d. Type of SFT;

    e. Cleared status;

    f. Type of asset class of the collateral (cash, equities, corporate bonds, government bonds, etc.);

    g. Currency of the cash leg;

    h. Maturity bucket, where relevant, per each 0.5 % points;

    i. Haircuts buckets, where relevant, per each 0.5 % points;

    j. TRs vis-à-vis which the position is.

2. A trade repository shall provide the entities listed in Article 12(2) of Regulation 2365/2015 with aggregate level data calculated in accordance with international standards on SFT data collection and aggregation.

Data collection

Article 3

Data validations by trade repositories

1. A trade repository shall perform the following data validations:

   a. A trade repository shall authenticate a report submitting entity of an SFT, as defined in field [insert reference to Annex of RTS].

   b. A trade repository shall verify the correctness of the xml schema developed in accordance with ISO 20022 methodology used to submit the report

   c. A trade repository shall verify that a report submitting entity is duly permitted / authorised to report on behalf of the reporting counterparty, except for the situations defined in Article 4(3) of Regulation (EU) No 2365/2015.

   d. A trade repository shall verify that a report submitting entity is not modifying the details of an SFT that was not reported or that was cancelled.

   e. A trade repository shall verify that the reporting file has not already been submitted.

   f. A trade repository shall verify that a report submitting entity is not submitting a report with action type "New" for an SFT with a UTI that the trade repository has already received.

   g. A trade repository shall verify that a report submitting entity is not updating the reporting counterparty and the other counterparty of an already reported SFT.

   h. A trade repository shall verify that the report submitting entity is not attempting to update the terms of the trade using a trade date that is after termination date of the trade.

i. A trade repository shall verify the correctness and completeness of an SFT in accordance with the criteria defined in Article [insert reference to ITS on reporting]

2. A trade repository shall verify whether information on the cash, securities or commodities transferred as a collateral has been reported and shall notify the reporting counterparty

3. A trade repository shall reject an SFT report that is not compliant with at least one of the validations defined in paragraph 1 and shall assign one of the categories of rejection defined in Table 2 of the Annex to this Regulation.

4. A trade repository shall notify to the reporting counterparty the results of the data validations in accordance with the procedure and timelines defined in Article 5.

Article 4

Reconciliation of data by trade repositories

1. Following the completion of the data validations in accordance with Article 3, where both counterparties to the SFT have a reporting obligation under Regulation 2365/2015, a trade repository shall reconcile the details of that SFT by finding the other side of the SFT and by comparing the details reported as defined in table 1 of the Annex to this Regulation. A trade repository shall always reconcile the latest reported value for each of the fields detailed in table 1 of the Annex to this Regulation

   a. A trade repository shall initiate the process of finding the other side of the SFT and of comparing the relevant fields detailed in Table 1 of the Annex at the earliest opportunity.

   b. When a trade repository fails to find the other side of an SFT for which it received an SFT report, then that trade repository shall seek for the other side of the report at all the other trade repositories.

   c. The trade repositories shall initiate the process of seeking the other side of an SFT report no later than 8:00 Universal Coordinated Time on each Target 2 calendar day.

d. To ensure confidentiality of the data, the trade repository shall exchange initially only the Unique Trade Identifier of the relevant SFT, the LEI of the reporting counterparty and the LEI of the other counterparty.

e. A trade repository shall reconcile separately the fields included under loan section and the fields included under collateral section of an SFT report.

f. Once a trade repository has determined the trade repository that holds the other side of an SFT, they shall exchange the details of an SFT as defined in paragraph g in order to reconcile those details.

g. A trade repository shall exchange with the relevant other trade repositories the details of SFTs subject to reconciliation in an XML format and using a common ISO 20022 compliant XML schema

h. A trade repository shall reconcile the details of an SFT defined in Table 1 of the Annex to this Regulation in accordance with the tolerance limits defined in that table.

i. A trade repository shall finalise the processes covered by points b to h of this paragraph at the earliest opportunity and no later than 18:00 Universal Coordinated Time

j. A trade repository shall notify to the reporting counterparties the results of the reconciliation process in accordance with paragraph 2 of Article 5.

k. Where a trade repository identifies non-reconciled SFT, it shall seek to reconcile that SFT on the following working day. Thirty calendar days following the maturity or submission of a report using the Action type "C" for a non-reconciled SFT, the trade repository shall remove it from reconciliation.

l. A trade repository shall confirm with each trade repository with which it has reconciled SFTs the number of reconciled SFTs between themselves.

2. A trade repository shall assign to each SFT a reconciliation category, as detailed in Table 3 of the Annex to this Regulation.

Article 5

Response mechanisms

1. No later than sixty minutes after the reception by a trade repository of an SFT report, a trade repository shall provide the reporting counterparty with detailed information on the results of the validations performed under paragraph 1 of Article 3 in theXML format and using a template developed in accordance with ISO 20022 methodology. A trade repository shall identify, where relevant, the specific reasons for rejection of an SFT.

2. No later than sixty minutes after the finalisation of the reconciliation in accordance with paragraph 9 of Article 4, a trade repository shall provide to the reporting counterparty detailed information on the results of the reconciliation performed under Article 4 in the XML format and using a template developed in accordance with ISO 20022 methodology, including information on the fields that are not reconciled. A trade repository shall assign a reconciliation category to each SFT, as detailed in table 3 of the Annex to this Regulation.

3. Where a reporting counterparty has delegated its reporting to another entity or in the instances defined in Article 4(3) of Regulation 2365/2015, the trade repository shall notify of the results of the validation and the reconciliation status the delegated entity or the entity responsible for reporting, respectively.

Article 6

End of day response mechanisms

4. A trade repository shall provide by the end of each working day the following detailed information to the reporting counterparties:

   a. Information regarding the SFTs submitted during the day by this counterparty

   b. Information regarding the latest trade states of the SFTs that have not matured or for which submissions with Action types "E" or "C", have not been made

   c. Information regarding the rejections of SFTs that have occurred during the day

   d. Information regarding the reconciliation status of all reported SFTs

5. A trade repository shall provide to the reporting counterparties the UTIs of those SFTs for which specific collateral information has not been reported.

6. Where a reporting counterparty has delegated its reporting to another entity or in the instances defined in Article 4(3) of Regulation 2365/2015, the trade repository shall provide the information detailed in paragraph 1 and 2 to this Article to the delegated entity or the entity responsible for reporting, respectively.

Article 7

End of day reports to the entities listed in Article 12(2) SFTR

Details of SFTs for authorities

1. A trade repository shall provide by the end of each working day the following detailed information to the entities listed in Article 12(2) of Regulation 2365/2015, filtered in accordance with [insert reference to Article XX of RTS on access levels]:

    a. All SFT submissions made on the working day.

    b. The latest state of the trades that have not matured of for which Action type "C" or "E" have not been reported as of the close of the working day.

    c. All SFT submissions made under SFTR in accordance with certain criteria defined as of the day of the request by an authority.

    d. Daily report detailing the rejected SFTs and the reasons for rejection, as specified in accordance with Table 2.

    e. Daily report detailing the reconciliation status of the SFTs, and detailing the reasons for lack of reconciliation.

Article 8

Public data

1. A trade repository shall publish on its website no later than Tuesday midnight aggregate data on the SFTs reported by the previous Friday in accordance with the aggregations detailed in the following paragraphs. A trade repository shall ensure public data are stored in a location on its website that is easily accessible to the public.

2. Where the aggregate data to be published by the trade repository might allow for the identification of individual counterparties, the trade repository shall not publish such data.

3. A trade repository shall publish all aggregate 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.

4. A trade repository shall publish aggregate position data on all the SFTs reported with Action type "New" during the week in accordance with the following criteria:

   a. location of the reporting counterparty or, where different, of the relevant branch;

   b. location of the other counterparty or, where different, of the relevant branch;

   c. type of SFT;

   d. reconciliation category, as defined in Table 2 of the SFT;

   e. type of venue of execution;

   f. whether the SFT was cleared or not;

   g. method of transferring collateral.

5. A trade repository shall publish aggregate position data on all the SFTs, that have not matured or for which submissions with Action types "E" or "C" have not been made, in accordance with the following criteria:

   a. location of the reporting counterparty or, where different, of the relevant branch;

   b. location of the other counterparty or, where different, of the relevant branch;

   c. type of SFT;

   d. reconciliation status of the SFT;

   e. type of venue of execution;

   f. whether the SFT was cleared or not;

   g. method of transferring collateral;

h. each benchmark used as reference in an SFT where the aggregate nominal amount traded in that benchmark is greater than 10 billion EUR or, if lower, the resulting nominal amount of the SFTs concluded by the ten most active counterparties.

6. When publishing the data included in paragraphs 3 and 4, a trade repository shall provide aggregate data on:

    a. the principal of repurchase agreements, the trade amount of buy/sell-backs, the aggregate quantity of securities or commodities lent or borrowed and the number of margin loans;

    b. the number of SFTs;

    c. the market value of collateral.

7. A trade repository shall ensure that the aggregate data is provided in easily downloadable format, such as comma separated values.

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 1

Table 1 Reconciliation fields and tolerance levels

Table	Section	Field	Tolerance
Counterparty data	NA	Reporting Counterparty	No
Counterparty data	NA	Counterparty Side	No
Counterparty data	NA	Other counterparty	No
Transaction data	Loan	UTI	No
Transaction data	Loan	Cleared	No
Transaction data	Loan	Clearing Timestamp	Timestamp
Transaction data	Loan	CCP	No
Transaction data	Loan	Trading venue	No
Transaction data	Loan	Master agreement	No
Transaction data	Loan	Execution timestamp	Timestamp
Transaction data	Loan	Value Date (Start Date)	No
Transaction data	Loan	Maturity Date (End Date)	No
Transaction data	Loan	Termination Date	No
Transaction data	Loan	Minimum notice period	No
Transaction data	Loan	Earliest Call-back Date	No
Transaction data	Loan	General Collateral Indicator	No
Transaction data	Loan	DBV Indicator	No
Transaction data	Loan	Method used to provide collateral	No
Transaction data	Loan	Open term	No
Transaction data	Loan	Termination optionality	No
Transaction data	Loan	Fixed rate	Percentage
Transaction data	Loan	Day count convention	No
Transaction data	Loan	Floating rate	No
Transaction data	Loan	Floating rate -time period	No
Transaction data	Loan	Floating rate reference period- multiplier	No
Transaction data	Loan	Floating rate payment frequency – time period	No
Transaction data	Loan	Floating rate payment frequency – multiplier	No
Transaction data	Loan	Floating rate reset frequency - time period	No
Transaction data	Loan	Floating rate reset frequency - multiplier	No
Transaction data	Loan	Spread	Percentage
Transaction data	Loan	Adjusted rate	Percentage
Transaction data	Loan	Rate Date	No
Transaction data	Loan	Principal amount on value date	No
Transaction data	Loan	Principal amount on maturity date	Calculated
Transaction data	Loan	Principal amount currency	No

Table	Section	Field	Tolerance
Transaction data	Loan	Type of asset	No
Transaction data	Loan	Security or commodity identifier	No
Transaction data	Loan	Base product	No
Transaction data	Loan	Sub - product	No
Transaction data	Loan	Further sub - product	No
Transaction data	Loan	Quantity or nominal amount	No
Transaction data	Loan	Unit of measure	No
Transaction data	Loan	Security or commodity price	No
Transaction data	Loan	Forward price	Calculated
Transaction data	Loan	Price currency	No
Transaction data	Loan	Trade amount on value date (spot leg)	No
Transaction data	Loan	Trade amount on maturity date (forward leg)	Calculated
Transaction data	Loan	Trade amount currency	No
Transaction data	Loan	Loan value	No
Transaction data	Loan	Rebate rate	No
Transaction data	Loan	Reinvestment rate	No
Transaction data	Loan	Lending fee	No
Transaction data	Loan	Outstanding loan	No
Transaction data	Loan	Currency of outstanding loan	No
Transaction data	Loan	Total margin financing available	Calculated
Transaction data	Loan	Remaining margin financing balance available	Calculated
Transaction data	Loan	Available margin financing currency	1 bp from midpoint
Transaction data	Loan	Short market value	Calculated
Transaction data	Loan	Short market value currency	No
Transaction data	Loan	Adjusted rate	No
Transaction data	Loan	Rate Date	No
Transaction data	Loan	Principal amount on value date	No
Transaction data	Collateral	Type of collateral component	No
Transaction data	Collateral	Collateral component	No
Transaction data	Collateral	Cash Collateral Amount	No
Transaction data	Collateral	Collateral quantity or nominal amount	No
Transaction data	Collateral	Identification of a collateral component (securities and commodities)	No
Transaction data	Collateral	Currency of collateral nominal amount	No
Transaction data	Collateral	Price currency	No
Transaction data	Collateral	Price per unit	No
Transaction data	Collateral	Collateral market value	Calculated
Transaction data	Collateral	Haircut or margin	Percentage
Transaction data	Collateral	Collateral quality	No
Transaction data	Collateral	Maturity of the security	No

Table	Section	Field	Tolerance
Transaction data	Collateral	Jurisdiction of the issuer	No
Transaction data	Collateral	LEI of the issuer	No
Transaction data	Collateral	Availability for collateral Re-Use	No
Transaction data	Collateral	Collateral basket identifier	No
Transaction data	Collateral	Base product	No
Transaction data	Collateral	Sub - product	No
Transaction data	Collateral	Further sub - product	No
Transaction data	Collateral	Unit of Measure	No

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 permissioned 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

16 Annex X - RTS on access levels under SFTR

COMMISSION DELEGATED REGULATION (EU) No …/…

of [   ]

supplementing Regulation (EU) No 2365/2015 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 2365/2015 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 paragraph (c) of Article 12 (3) thereof,

Whereas:

(1) One of the primary functions and objectives of the trade repository is to ensure the direct and immediate access to data to the authorities listed in Article 12(2) of Regulation (EU) No 2365/2015. Article 12(2) of Regulation (EU) No 2365/2015 establishes the authorities entitled with direct and immediate access to SFTs.

(2) 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 ensure compliance with the relevant responsibilities and mandates of the authorities listed in Article 12(2) of Regulation EU) No 2365/2015.

(3) 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.

(4) In order to establish efficient access to data, the trade repositories should ensure that each authority has a single access to data irrespective of the different responsibilities and mandates it has.

(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, transactions, infrastructures or assets are defined and the jurisdiction of an authority is determined as 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 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.

(7) Access by the relevant ESCB members serves to fulfil their basic tasks, most notably the functions of a central bank of issue, their financial stability mandate, and in some cases prudential supervision over some counterparties. Since certain ESCB members have different mandates under national legislation, they should be granted access to data in accordance with their relevant responsibilities and mandates.

(8) The relevant Union securities and markets authorities referred to in paragraph (i) of Article 12(2) of Regulation (EU) No 2365/2015 have as a duty investor protection and should be granted with access to all transaction data for markets, SFTs, securities, commodities, and participants, as well as branches, subsidiaries or holding companies of those established in the relevant Member State and to transaction data for for SFTs where the securities or commodities lent or borrowed or provided as collateral relate to an entity established within their respective territory, or where the securities lent or borrowed or provided as collateral are sovereign debt of the respective territory.

(9) Supervisors and overseers of central counterparties (CCPs) need access to enable the effective exercise of their duties over of such entities, and should therefore have access to all the information necessary for such mandate.

(10)   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, in particular 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. Hence it is important to ensure that those authorities have

access to all transaction data reported by counterparties with reporting obligation under Article 4 of Regulation (EU) No 2365/2015.

(11)   Pursuant to Directive 2014/59/EU, the resolution authorities should possess effective means of action with respect to those entities covered by Directive 2014/59/EU 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. In this respect, resolution authorities should have access to data reported by the entities established in their Member State from the moment in which the relevant designation takes place.

(12)   Under Council Regulation (EU) No 1024/2013 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. The trade repository should ensure that each relevant authority that is part of the SSM has access to the transaction data of the entities, their branches, subsidiaries and holding companies established in the relevant participating Member States.

(13)   The authorities included under paragraph (m) of Article 12(2) of Regulation 2365/2015 are all those competent for prudential supervision of credit institutions, investment firms, insurance and reinsurance companies, UCITS and AIFM, occupational pensions, central securities depositories, as well as non-financial counterparties. The authorities should be provided with access to data reported by the entities, their branches, subsidiaries and holding companies established in the relevant participating Member States.

(14)   The trade repositories should follow a specific procedure for defining the terms and condition of data access. The trade repositories should use a template registration form and an authorities access levels table to define the access rights of the authority. A trade repository should designate a person or persons responsible for the relationship with authorities and it should publish on its website the relevant instructions for submission of the tables and templates to define the access to data of a given authority. In order to ensure the direct and immediate access to data a trade repository should include a maximum timespan for the provision of access to data.

(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 must 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)   Transaction data for an SFT should include all submissions made to the trade repository in relation to the SFT and also the latest trade state for the SFT. Data concerning the latest trade state of an SFT with open interest is essential for monitoring financial stability and systemic risk. Therefore, the relevant authorities should have access to that data.

(18)   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.

(19)   Harmonisation of the frequency 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.

(20)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(21)   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. Transaction data includes all the details of an SFT recorded by the trade repository, the details of SFTs not accepted by the trade repository, under paragraphs [insert reference to RTS on registration or data collection], as well as the relevant details following the performance of a reconciliation process carried out in accordance with [insert reference to RTS on registration or data collection].

2. Where an authority has more than one responsibility and mandate with regards to the access to transaction data reported under Article 4 of Regulation (EU) No 2365/2015, the trade repository shall ensure that the authority has a single comprehensive access to the details of SFTs comprising all the mandates of the authority.

3. A trade repository shall provide access to all transaction data for all the SFTs reported under Article 4 of Regulation (EU) 2365/2015 to the European Securities and Markets Authority (ESMA).

4. A trade repository shall provide the Authority for the Cooperation of Energy Regulators (ACER) with access to all transaction data regarding SFTs where energy commodity is lent or borrowed or provided as collateral.

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 the transaction data for SFTs cleared or concluded by CCPs or by counterparties, branches, subsidiaries or holding companies of those established in the relevant territory.

6. A trade repository shall provide a competent authority supervising the venues of execution of the reported SFTs with access to all the transaction data for SFTs executed on those venues or concluded by counterparties, branches, subsidiaries or holding companies of those established in the relevant territory.

7. A trade repository shall provide a supervisory authority appointed under Article 4 of Directive 2004/25/EC with access to all the 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 within the relevant territory and fall within the scope of the authority according to its respective supervisory responsibilities and mandates;

b. It has its registered office or, where it has no registered office, its head office, in their relevant territory and fall within the scope of the authority according to its respective 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 Article 12(2) of Regulation (EU) No 2365/2015 with access to all transaction data for markets, assets and participants, as well as on branches, subsidiaries or holding companies of those, established in the relevant Member State and to transaction data for b. for SFTs where the securities or commodities lent or borrowed or provided as collateral relate to an entity established within their respective territory, or where the securities lent or borrowed or provided as collateral are sovereign debt of the respective territory.

9. A trade repository shall provide the European Systemic Risk Board, EBA and EIOPA with transaction data for all the SFTs reported under Article 4 of Regulation (EU) 2365/2015.

10. A trade repository shall provide the relevant members of the ESCB with transaction level data:

   a. for all counterparties to SFTs that are established within the relevant territory.

   b. for SFTs where the securities lent or borrowed or provided as collateral relate to an entity established within their respective territory or where the securities lent or borrowed or provided as collateral are sovereign debt of the respective territory.

   c. for SFTs where the currency lent or borrowed or provided as collateral is the currency issued by that authority.

11. A trade repository shall provide ECB, in carrying out its tasks within a single supervisory mechanism under Council Regulation (EU) No 1024/2013, with transaction data for SFTs concluded by all entities established in participating Member States, as well as their branches, subsidiaries and holding companies.

12. For the supervision of counterparties, their branches, subsidiaries and holding companies, the trade repository shall provide, the relevant authorities listed in paragraph (m) of Article 12(2) of Regulation (EU) No 2365/2015 with access to all transaction data for SFTs concluded by all entities established in the relevant territory, as well as their branches, subsidiaries and holding companies.

13. For the resolution planning of counterparties, their branches, subsidiaries and holding companies, subject to Directive 2014/59/EU, the trade repository shall provide the Single Resolution Board and the resolution authorities listed in paragraph (k) of 12(2) of Regulation (EU) No 2365/2015 with access to all transaction data for SFTs concluded by all entities established in the relevant territory as well as their branches, subsidiaries and holding companies.

Article 2

Third country authorities access

In relation to a relevant authority of a third country that is specified in the Commission Implementing Act under Article 19(1) of Regulation 2365/2015, 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) or international agreement under Article 19(2).

Article 3

Terms and conditions for data access

1. A trade repository shall put in place the following procedure for the purposes of establishing the relevant access levels and providing direct and immediate access to data.

    a. It shall designate a person or persons responsible for relationship with authorities listed under Article 12(2) SFTR

    b. It shall publish on its website the relevant instructions (email, etc.) for submission of requests for data access by authorities

    c. It shall provide the authorities with the relevant template forms defined in paragraph 2 and table, defined in paragraph 3 of this Article, to be able to assess their access levels.

    d. It shall provide access to data based only on the relevant template forms and tables provided by the authorities.

e. It shall define a maximum timespan of 30 calendar days needed to establish the direct and immediate access to data

f. It shall include the relevant technical arrangements to access the data in accordance with paragraphs 4 to 10 of this Article.

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

   a. Name of the authority

   b. Contact person at the authority

   c. Legal mandate

   d. List of authorised users

   e. Credentials for secure SSH FTP connection

   f. Other relevant technical information to ensure timely access to data

3. A trade repository shall ensure that the authorities are granted access to data that corresponds to their responsibilities and mandates. The trade repository shall assess the data on the basis of a template that includes the following information:

   a. Territory, e.g. Member State, euro area or EU, for which the authority is competent, both for legal entities and for branches

   b. Types of counterparties [99] for which the authority is competent, e.g. credit institutions, investment firms, etc.

   c. Types of SFTs for which the authority is competent

   d. Securities that were borrowed or lent or provided as a collateral issued by an entity established in the relevant territory, that is supervised by the relevant authority

   e. Commodities produced or delivered in the relevant territory, which were either borrowed or lent or provided as a collateral

   f. Venues of execution

   g. CCPs

   h. Currency of issue

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[99] 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) No 2365/2015 to connect with a secure machine-to-machine interface, including by 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 this interface.

5. In accordance with Articles 1 and 2, a trade repository shall allow the entities listed Article 12(2) of Regulation (EU) No 2365/2015 access to:

   a. all submissions relating to reported SFTs, and

   b. the latest trade states of reported SFTs that have not matured or which have not been the subject of submissions with action types "E" or "C" as referred to in field [insert reference to ITS under Article 4 SFTR]

6. A trade repository shall allow the entities listed in Article 12(2) of Regulation (EU) No 2365/2015 to establish predefined periodic requests to access all transaction data of the SFTs they need to fulfil their responsibilities and mandates.

7. A trade repository shall allow the entities listed in Article 12(2) of Regulation (EU) No 2365/2015 to submit requests specifying the transaction data to be made available, 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. Corporate sector of the reporting counterparty;

   e. Nature of the reporting counterparty;

   f. Broker;

   g. Report submitting entity;

   h. Beneficiary;

   i. Type of SFT

   j. Type of collateral component

   k. Venue of execution;

l. Execution timestamp;

m. Maturity date;

n. Termination date;

o. CCP; and

p. Action type.

8. A trade repository shall set up the necessary technical arrangements to allow direct and immediate access by the entities listed in Article 12(2) of Regulation (EU) No 2365/2015 to all transaction data of the derivatives contracts they need to fulfil their mandates and responsibilities as follows:

   a. For transaction data regarding outstanding SFTs or SFTs which have either matured or for which submissions with action types "E", "C", as referred to in field XX of [insert reference to RTS under Article 4] were made less than one year before the date on which the request was submitted, no later than 12:00 Universal Coordinated Time on the first calendar day following the day on which the specific request to access is submitted; and

   b. For transaction data regarding SFTs which have either matured or for which submissions with action types "E" and "C", as referred to in field XX of [insert reference to RTS under Article 4] were made more than one year before the date on which the request was submitted, no later than three working days after the specific request to access is submitted.

   Where a request relates to SFTs falling under sub-paragraphs (a) and (b), the trade repository shall provide the transaction data no later than three working days after the specific request to access is submitted.

9. A trade repository shall acknowledge and validate the requests to access to data submitted by the entities listed in Article 12(2) of Regulation (EU) No 2365/2015 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) No 2365/2015.

17 Annex XI - 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) One of the primary functions and objectives of the trade repository is to ensure the direct and immediate access to data to the authorities listed in Article 81(3) of Regulation (EU) No 648/2012.

(2) Article 32(2) of Regulation (EU) No 2365/2015 has amended Article 81(3) of Regulation (EU) No 648/2012. The following authorities have been added to the list of entities entitled with direct and immediate access to derivatives data: the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA); the ECB in carrying outs tasks within a single supervisory mechanism under Council Regulation (EU) No 1024/2013, the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council; the Single Resolution Board established by Regulation (EU) No 806/2014, the competent authorities or national competent authorities within the meaning of Regulations (EU) No 1024/2013 and (EU) No 909/2014 and of Directives 2003/41/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU and, 2014/65/EU, and supervisory authorities within the meaning of Directive 2009/138/EC, and the competent authorities designated in accordance with Article 10(5) of Regulation (EU0 No 648/2012.

(3) 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.

(4) 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 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.

(5) In order to establish efficient access to data, the trade repositories should ensure that each authority has a single access to data irrespective of the different responsibilities and mandates it has.

(6) 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.

(7) EBA and EIOPA are part of the European System for Financial Supervision and have responsibilities and mandates very similar to those of ESMA and ESRB, in particular 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. Hence it is 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.

(8) Pursuant to Directive 2014/59/EU the resolution authorities should possess effective means of action with respect to those entities covered by Directive 2014/59/EU 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. In this respect, resolution authorities should have access to data reported by the entities under their responsibility from the moment in which the relevant designation takes place.

(9) Under Council Regulation (EU) No 1024/2013 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. The trade repository should ensure that each relevant authority that is part of the SSM has access to the transaction data of the counterparties, subsidiaries and holding companies within the scope of that authority according to its supervisory responsibilities and mandates.

(10)   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, central securities depositories, as well as non-financial counterparties. The authorities should be provided with access to data reported by the relevant entities in accordance with their respective responsibilities and mandates.

(11)   This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(12)   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 2 is replaced by the following article:

1. Transaction data includes all the details of a derivative contract recorded by the trade repository, the details of derivatives not accepted by the trade repository, as well as the relevant details following the performance of a reconciliation process carried out in accordance with paragraph 1(c) of Article 19 of Commission delegated regulation 150/2013.

2. Where an authority has more than one supervisory responsibility and mandate under Regulation (EU) No 648/2012, the trade repository shall ensure that the authority has a single comprehensive access to the details of derivatives comprising all the mandates of the authority.

3. A trade repository shall provide access to all transaction data to the European Securities and Markets Authority (ESMA) for the purpose of fulfilling its supervisory competences and relevant 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 the transaction data for derivatives cleared or concluded by the CCP.

6. A trade repository shall provide a competent authority supervising the venues of execution of the reported contracts with access to all the transaction data on 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 the 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 within the relevant territory and fall within the scope of the authority according to its respective supervisory responsibilities and mandates;

b. it has its registered office or, where it has no registered office, its head office, in their relevant territory and fall within the scope of the authority according to its respective 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 Article 81(3)(h) of Regulation (EU) No 648/2012 with access to all transaction data for markets, contracts, underlyings and participants, as well as the subsidiaries or holding companies of those that fall within the scope of that authority according to its respective supervisory responsibilities and mandates.

9. A trade repository shall provide the European Systemic Risk Board, EBA and EIOPA with transaction data for all the derivatives reported under Article 9 of Regulation (EU) 648/2012.

10. A trade repository shall provide the relevant members of the ESCB with transaction level data:

a. for all counterparties that are established within the relevant territory and fall within the scope of that authority according to its respective supervisory responsibilities and mandates.

b. for derivatives contracts where the reference entity of the derivative contract is established within their respective territory and falls within the scope of that authority according to its respective supervisory responsibilities and mandates, or where the reference obligation is sovereign debt of the respective territory.

11. A trade repository shall provide a relevant ESCB member with access to position data for derivatives contracts in the currency issued by that member.

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 transaction data for all entities authorised under Regulation (EU) No 575/2013, as well as their subsidiaries and holding companies that fall within the scope of that authority according to its respective supervisory responsibilities and mandates.

13. For the supervision of counterparties, their subsidiaries and holding companies, the trade repository shall provide, the relevant entities listed in paragraphs (o) and (p) of Article 81(3) of Regulation (EU) No 648/2012 with access to all transaction data for all counterparties, subsidiaries and holding companies that fall within the scope of that authority according to its respective supervisory responsibilities and mandates.

14. For the resolution planning of counterparties, their subsidiaries and holding companies subject to Directive 2014/59/EU, the trade repository shall provide the Single Resolution Board and the resolution authorities listed in paragraph (m) of Article 81(3) of Regulation (EU) No 648/2012 with access to all transaction data for such counterparties, subsidiaries and holding companies.