EFAMA response to the ESMA Consultation Paper on the Draft RTS and ITS under SFTR and amendments to related EMIR RTS

The European Fund and Asset Management Association[1], EFAMA, supports every efforts made to enhance financial markets regulation which reinforces the stability and the transparency of the financial system.

In that perspective, EFAMA welcomes the opportunity to comment on the ESMA consultation paper on the Draft RTS and ITS under SFTR and amendments to related EMIR RTS.

Prior to replying to the consultation, we wish to make the following general remarks.

1. General Comments .

First and foremost, we welcome the fact that the proposed reporting format and reporting infrastructures are set in a manner that greatly incentivise the use of existing reporting format (ISO 22022), the use of identifiers (LEIs) and the use of existing Trade Repositories ("TRs").

Secondly, and more worrying from our perspective, we are of the view that the funds and asset managers industry is facing an unfair treatment compared to other market participants:

a. Excessive amount of data required.

This proposed Regulation provides that aggregated (position) data on securities lending, repurchase transactions (repo) and reverse repo (collectively 'securities finance transactions' – "SFT") must be delivered to the authorities (national or European) with the aim to:

- Help regulators to better understand potential risk in the markets which they are responsible for overseeing;
- Allow regulators to see trends over time. Regulators could achieve these goals by leveraging existing platforms that are already used by the major market participants to share information

[1] **EFAMA** is the representative association for the European investment management industry. EFAMA represents through its 26 member associations and 61 corporate members EUR 21 trillion in assets under management of which EUR 12.6 trillion managed by 56,000 investment funds at end 2015. Just over 30,000 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining 25,900 funds composed of AIFs (Alternative Investment Funds). For more information about EFAMA, please visit www.efama.org

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for existing operational and regulatory purposes, without significant additional effort by regulators or by the industry;
- Allow for comparison whilst being proportionate to the risks arising from SFTs when disclosed to regulators at the desired frequency.

In this context, it should be highlighted that regulators will probably have to put in place processes and analyse the data they are provided with. In other words, the use that will be made of the collected data should be taken into consideration.

For end-investor, though, to be meaningful, the information disclosed to end-investors and the wider market should be at an appropriately high level and readily comparable.

More generally, the impact in terms of cost of such reporting should be carefully assessed as compared to the expected benefits. A frequent reporting and update of information documents would be extremely costly for counterparties to SFTs and in turn for their clients. These costs have to be balanced by greater benefits.

b. ESMA's 2012 Guidelines on ETFs and other UCITS issues (as revised in 2014).

As expressed at multiple occasions, we believe that the regime imposed on UCITS (and extended to AIFs in several EU countries) in ESMA guidelines on ETFs deprive regulated funds from access to margining (see for instance EFAMA reply to the consultation on EMIR review).

At the reading of those Guidelines in conjunction with the currently proposed RTS and ITS, we are of the view that, (i) the increasing pressure on funds to provide collateral without having the tools to meet those obligations; and (ii) the burdensome reporting requirements (including back-loading of information) are

- going against the EU Commission willingness to foster non-bank financing in Europe;
- bringing no benefit to end-investors in the currently proposed reporting framework specifically applicable to funds and asset managers.

2. Applicable law to TRs under SFTR

Trade repositories fulfil an important regulatory role and are supervised businesses.

Trade repositories from Non-EU countries tend to foresee the application of their national law and the jurisdiction of national courts over any disputes arising in the context of trade repository services.

According to our understanding, those TRs will be subject to SFTR but shall not receive EU approval under the applicable regulation if they do not receive an recognition of equivalence for all of their data and service contracts.

We consider that this would be detrimental for firms having cross-countries activities, especially for small and medium sized EU firms without a direct presence in the US. Without adequate equivalence rules, those firms will not obtain efficient legal protection in case of disputes with the service provider. Therefore, we encourage ESMA to guarantee a system of equivalence similar to the equivalence regime existing under EMIR.

3. Detailed reply.

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.

EFAMA has been advocating for the development and enforcement of reporting standards, supporting among other initiatives the use of LEIs or ISINs for derivatives instruments.

In that perspective, we deem crucial to impose the use of LEI to authenticate users and participants as a primary identifiers of counterparties to SFTs.

The use of names of the counterparties could be used as a non-mandatory information in a separate field and should not constitute any sort of official reference.

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.

In the section 3,6, point 71, we consider that ex-post checks could facilitate the extension of registration for existing TRs.

In the section 3,8, point 76, we agree with the proposal but the information required must be immune of any back-loading requirement.

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.

We agree with the points 94 to 97.

Regarding points 92 and 93, we consider that they are likely to generate problems to identify the counterparty of an SFT in a proper way in several part of the text.

For example:

- The term "intermediary" is not precise;
- The word "principal basis" might not be compliant with some EU jurisdictions;
- The term "broker" is explained in different ways within the CP:
    1. point 93, one might come to the conclusion that the asset management company is to be considered as broker which would be contrary to the description in point 133;
    2. point 133: the broker does not become a counterparty as it is "acting on its own account";
    3. point 135: the broker becomes a "counterparty" to the trade
    4. point 137: the brokers is acting as "principal" to the transaction and "matched principal brokers".

Please note that, from a buy side perspective, a regulated fund or asset manager is never acting as a broker and in such function a broker does never act on its own account.

We also disagree with the alternative classification system based on the standards of the United Nations System of National Accounts (SNA 2008). The introduction of such a new classification system will only lack of legal certainty and lead to duplication of reporting for the reporting counterparties without any additional value for the regulators to monitor systemic risk in the SFT market.

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

We see a risk of creation of a false representation of the economic actors involved in the transactions, some actors being only agents to the transaction and parties to the transaction.

See also our reply to Q4

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

Regarding the definition of CCPs, we are of the view that it should be aligned with the definition of CCP under EMIR.

We would also suggest to improve the definition of Agents as well as the definition of Broker.

In the currently proposed text, agents can be representing a counterparty (in a direct clearing model) or acting on behalf of a counterparty ("as agent for") or intermediaries (such as agent lender).

Please note that, from a buy side perspective, in such function a broker does never act on its own account.

We strongly encourage ESMA to align the definition with the existing definition in EMIR for the sake of legal certainty.

(See also our reply to Q4)

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.

Collateral can only be reported on position level, whether or not cleared.

The reason for that is that the collateralisation is made at the level of the counterparties rather than the individual transaction. This approach is also reflected in the structure of the standard master agreements governing those transactions.

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.

Regarding the tables 1 and 2, we may agree on the principle stated in Table 1 in point 115.

However, we would like to highlight some elements that are of concern for us.

We do not see any benefit in the requirement to report collateral received by security. In line with that, we also do not see the benefit of the requirement of reporting the substitution of collateral components as a "change in business terms".

We would like to also highlight the fact that table 2 uses different phrases than outlined in table 1: in table 1 there is an action type called "Cancellation" which is not present at table 2.

Therefore, we ask ESMA to confirm that action type "Error" in table 2 should cover the meaning of "Cancellation" in table 1.

As regard to report types, we can agree to distinct reports for repo and buy/sell back trade in the reporting framework because:

- BSB/SBB trades are often undocumented BSB/SBB and as an outright buy or sell there is never a further exchange of collateral; and
- In presence of uncollateralized BSB/SBB it should be reported the exchange of the principal (securities/commodities) versus cash while information on "collateral data" are not applicable.

If our understanding is correct, the reporting schema should be amended accordantly.
The field n. 64 – "Uncollateralised (SL) flag" of Table 2 of the draft annex of ITS and RTS now applicable only to securities lending transaction should be extended to include also BSB/SBB trades.

Accordingly, the absence of the specific information on collateral data requested in the fields from 65 to 94, where applicable, should then be acceptable.

As regards the fields that would apply to BSB/SBB trades as indicated in the sheet "Loan & collateral data" of 2016-1409_sftr_tables_cp_version for BSB, the following issues should be considered :

- 9- Master agreement type: a further code, as for example "None", should be foreseen to allow also for undocumented BSB/SBB.
- 15 – Termination date: not applicable for all BSB/SBB trades. In our experience, early termination (partial or full) is not possible.

- 18 – General collateral indicator: not applicable for BSB/SBB trades. Those trades are an outright buy/sell in cash of specific instruments/commodities and therefore are not subject to general/specific collateral arrangements.
- 20 – Method used to provide collateral: not applicable for BSB/SBB trades.
- Collateral data:
- 65 – 94: not applicable for BSB/SBB uncollateralized trades. Should BSB/SBB be required to be treated as "collateralized" trade, a number of fields would be redundant as they would be a repeat (for example field 68 and field 9 for the Security identifier, 73 with 43 for the quantity or nominal amount ….).

As regards action types, we support the limitation of the number of action types.

As regards infrastructures, to leverage the infrastructure implemented under EMIR, we suggest to remain as close as possible to the action types outlined in table 2, field 58 "Action type" of the Implementing Regulation (EU) No 1247/2012 for the sake of efficiency, legal certainty and limitation of the implementation costs.

The entire industry implemented procedures to reflect those action types in their daily submission to trade repositories.

Therefore, we urge ESMA to align the "action types" with EMIR.

We are outlining hereunder some differences between the proposed action types under SFTR and the above mentioned EMIR action types:

a) Consolidation of action types "Modification of business terms" and "Other modification"
   The consultation paper under SFTR proposes two types of modification action types to distinguish between modifications of the business terms and other modifications.
   Under EMIR there is only one action type for modifying data sets – "M = Modify".
   In terms of further harmonisation this discrepancy between both reporting regimes increases the technical complexity for all stakeholders (financial companies, European authorities and national authorities).
   From a technical point of view it is a huge effort to implement a split into the current methods which distinguishes between two different modification types.
b) Introduction of action type "Valuation Update"
   SFTR states in its Art. 4 (10) that ESMA should "ensure uniform conditions of application […] and, to extent feasible, consistency with the reporting pursuant to Article 9 of Regulation (EU) No 648/2012".
   The current proposal doesn't contain an action type for the valuation of the collaterals used in SFTs. It states that instead of a separate action type the modification action types should be used for the valuation of contracts, whereas the substitution of collateral components should be reported as "Modification of business terms" and the daily valuation as "Other modification" (see no 123 of the consultation paper).

This approach deviates from the reporting logic known under EMIR where a separate action type for the valuation of collaterals has been introduced and implemented by the financial industry – "V = Valuation Update".

The separate handling of SFTR and EMIR will prohibit the reuse of the current reporting infrastructure and therefore won't meet the requirements cited above.

c) **Alignment of action type "Cancellation"**

The consultation paper outlines in table 1 that action type "Cancellation" should be used in case "a previously reported SFT report was incorrectly submitted and reported in error."

The EMIR field "Action type" (common data table field 58) has an action type which is called "E = Error" and covers the same cases as action type "Cancellation" under SFTR. In terms of consistency it makes sense to align the wording of those two action types to avoid misunderstandings. Especially, the fact that EMIR has an additional action type "C = Cancel" could lead to misinterpretations for market participants.

Based on those elements, we would like to encourage ESMA to remain as close as possible to the reporting methodology and the field definitions implemented in EMIR as we do not see any benefit in changing the type of reporting in these cases, neither for the industry nor for the regulators.

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

As outlined in Q11, we would like to encourage ESMA to remain as close as possible to the reporting methodology and the field definitions implemented in EMIR.

This means that there shouldn't be a split between different types of modifications as we can't see a further benefit in distinguishing the type of modification.

Additionally, to cover the collateral valuations which are currently part of both modification action types, an additional action type "V = Valuation Update" is required.

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

We fully support the proposed terminology.

Using the terms "collateral taker" and "collateral giver" is the most relevant approach as it is possible to be applied regarding all kinds of SFTs.

Q15. Are the proposed rules for determination of the collateral taker and collateral giver clear and comprehensive? 193

Yes, the explanations provided give sufficient support to market participants.

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.

We agree with Scenario 1, which is the one that our members generally use.

We would like to insist on the need to identify each counterparty primarily through their LEI.

Regarding Scenario 2, we believe that the reporting should end at counterparty 3.

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.

Yes, we are of the opinion that the regime describes adequately bilateral repos.

However, we believe that the application of those scenarios needs clarification when applied to funds.

For the case of UCITS or AIFs, these funds (or sub-funds in the case of umbrella funds) should be identified as Counterparties with their LEI.

The fund's management companies cannot be considered as a counterparty. The fund's management company is only and strictly the entity responsible for reporting on behalf of that UCITS or AIFs. It never acts neither as broker nor as intermediary, even if it has outsourced the portfolio management to a third party.

In the latter case, the insourcing company should not be identified in any scenario neither as a "broker" not be responsible for the reporting.

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

We agree with Repo scenario 3, in principle and despite the fact that the vast majority of our members do not appear to use CCPs in their repos business.

From a legal certainty's perspective, we also suggest to clarify how the value of collateral and possible haircuts should be calculated (net or gross).

We also noticed that field n. 77 – " Collateral market value" in table 2 of draft RTS simply states that it is the "fair value of the individual component expressed in price currency".

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

We believe that the scenario 1 is unclear.

The description of securities lending scenario 1 introduces the following "participants":

- Intermediary
- Principal lender
- Beneficial owner
- Market participant
- Agent lender, and
- CSD participant

Scenario 1 refers to a "beneficial owner", who is only a beneficial but not the owner of the securities to be lent.

A reference to the real owner of the assets should be extremely relevant both from a legal certainty perspective and a control of the leverage.

Regarding scenarios 3 and 4 it is not clear why in one case the "Lending Agent" shall be considered as a counterparty while in the other case it shall not be considered as counterparty.

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?

We agree with the proposed models.

However, we insist on the need to have different levels of reporting duties for participants to a SFT according to their roles as described in the different scenarios.

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

No, contrary to point 168, both "legs" of buy- and sell- back transactions are generally also governed by a master agreement.

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?

We do not agree with the interpretation that "Short selling" could be a "proxy" for securities lending.

Borrowers of a securities lending transaction have various motives which may be e.g. bridging settlement delays (A has purchased a stock from B with a settlement period of 2 days and sold the stock to C with a settlement period of one day. B gets in delay with delivery. A borrows stock to fulfil its contractual obligation towards C).

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.

In general, we agree with the structure of the reports mentioned in point 196 and the Annex of the consultation paper.

However, we assume that in cases where no CCP is used and/or no reuse of collaterals is in place, one is not obliged to submit any information within tables 3 (Margin data) and 4 (Re-use Data).

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.

For asset managers the cases of re-use are limited today.

UCITS regulation for example prohibits any re-use.

On this specific aspect and as already expressed, we feel that it is overly restrictive and expect ESMA to review its guidelines on ETF and other UCITS issues on this point as well.

However, if we support reporting re-use when there is a risk on financial stability, we see no benefits in having a separate report for reuse.

The reuse does not represent a transaction per se and should therefore not be reported as such.

Additionally, this multiple reporting of the same instrument in different perspectives would add confusion, create risk of "white noise and deprive competent authorities from a clear overview of the markets and stability risks.

We believe that a field in the reporting of the transactions would therefore better serve the purpose of the reporting.

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.

We would recommend ESMA to keep a link in the reporting of the margin with the reporting of the principle trade to facilitate the calculation and the visibility of the risk, especially the counterparty risk.

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.

We would expect so.

Should it not be the case, we believe that there would be major difficulties from an operational perspective and for margining issues.

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

Referring to the section 4.3.2, we believe that there could be a risk of mis-interpretation.

The text refers to "Branches".

However, branches of companies or investment firms do not have LEI for branches and are neither required nor should be allowed to do so.

We would therefore urge ESMA to adapt its qualification and to use at the most granular level "subsidiaries" to designate corporate subject to an LEI.

Another important concerns for us is the lack of alignment between fields to report under EMIR and fields to report under SFTR.

Approximately 61% of the fields proposed in the SFTR consultation paper are new fields which cannot be reused from the EMIR infrastructure. Only 20% of the proposed fields can be reused from the EMIR infrastructure and 19% are existent within EMIR, but have different closed list, a different format or a different field name.

The fact that 61% of the fields under SFTR are completely new prooves that the requested granularity of data under SFTR is much higher than under EMIR, without view on any possible benefits to report several of those information.

A large number of newly introduced fields are introduced to gather more information than the financial industry is required to deliver under EMIR.

We would like to encourage ESMA to review whether the proposed granularity of data is necessary for the reporting under SFTR.

An alternative is to set some fields as not a mandatory part of the reporting obligation outlined in Article 4 of Regulation 2015/2365.

The second observation out of the attached field analysis is that some fields in EMIR and in SFTR can be reused. However, those fields (19% of the overall proposed fields) have different list values,

different names or different formats and therefore it is hard to reuse the existing EMIR infrastructure (e.g. "master agreement type").

Therefore, we would like to encourage ESMA to review the proposal of fields which are used in both SFTR and EMIR to "ensure consistency with the reporting made under Article 9 of Regulation (EU) No 648/2012 and internationally agreed standards" as outlined in no. 9 of Article 4 of Regulation 2015/2365.

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

There should not be reporting at the level of a branch.

(See our reply to Q38.)

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.

We agree with the proposed approach.

We insist on the need to maintain the LEI for umbrella funds at the level of the trading entity or the sub-fund according to the nature of the counterparties. This approach would be in line with the reporting already in place for EMIR.

Lastly, it should be noted that, since UCITSs and AIFs are financial counterparties and by definition also beneficiaries, it would be clarified that is not necessary to fill in the fields related to the beneficiary, as they would be redundant.

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

We disagree with the reporting structure under the point 226.

Considering the role of the CM and the CCP in a clearing model, the CM is not the counterparty to the transaction.

Consequently and depending on the model of access to CCPs, the UTI should be linked to the CCP and only:

- to CM and transmitted for information to the counterparty
- to the counterparties in case of direct access.

Therefore, in that perspective, we would recommend the alternative described in points 232 and 233.

Additionally, we believe that this alternative model would strengthen the capabilities to enforce better counterparty risk controls.

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.

In line with our reply to Q41, we believe that the sole relevant approach is the solution proposed in Alternative 2.

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.

We support the proposed rules for determining the entity responsible for the generation and transmission of the UTI.

We agree with the model propose in Figure 1 (UTI Generation flowchart) up and until scenario 6.

Regarding the scenario 7, we deem that the buy-side client such as for example UCITSand AIFs should be exempted, in general, from the obligation of generation of UTI. This obligation should be on the sell-side meaning credit institutions and investment firms (e.g. brokers/dealers) as they are often at the initiative of those transactions.

We support also art. 3 of ITS ("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").

However, we also consider that the proposed article should be more precise regarding the timeframe and timeline of the communication and should be extended to include an obligation of the generating party to deliver the UTI also electronically in such a way that it can be consumed efficiently.

More precisely, the party who is obliged to communicate an UTI to its counterparty:

- should do so as soon as possible and at least before the finalisation of the confirmation process;
- should provide the UTI in a standardized way (e.g. within the confirmation of the transaction) especially instead of
    - o requesting its counterparty to obtain the UTI from a website; or
    - o communicating it via separate e-mail).

(both, (i) and (ii) cannot be considered by the party receiving the UTI in an automated way).

Furthermore, we believe that ESMA should foresee some provisions in case of delays in the production of UTI where a counterparty fail to provide identifiers on timely manner.

In those circumstances, the receiver should be allowed to generate its own UTI in order to report. The TR should allow this provisional UTI to subsequently be amended once it is agreed with the counterparty.

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

We agree with most of the terms used.

However, the point 248 (b) indicates that "collateral basket" or "collateral schedule" means a list of securities agreed to be eligible for delivery against a given SFT. However, we see a difference in terms:

- the term "collateral basket" is primarily used in the repo market; and
- the term "collateral schedule" is primarily used in securities lending.

It should also be noted that the point 269 implies that a collateral basket could be identified by a ISIN while the reporting logic is different depending on whether a basket is identified by a ISIN or not.

As the list of securities included in a basket may frequently change, even daily, we understand that in such a case the use of a specific identification for the basket would not be possible. We ask for a clarification.

Lastly, for the term "Collateral portfolio" we would like to highlight that this is also used under EMIR. However, under EMIR, "Collateral portfolio" means that the collateral is calculated on the basis of net positions resulting from a set of contracts, rather than per trade. Therefore, the definition in point 248 might be misleading in the EMIR context.

We would like to encourage ESMA to review the consistency between EMIR and SFTR and amend/expand the definition accordingly.

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

We welcome ESMA's recognition of the benefits of the end of day approach for reporting

We also believe that ESMA should consider the content of the standard master agreements applying to repo trades.

The cash forming the "cash leg" of a repo trade is a purchase price.

None of the master agreements that we know of consider the purchase price as collateral.

Deeming it to be collateral might be right in an economic view but not from a legal one. Only the difference arising from market movements with respect to the securities sold under a repo trade compared to the purchase price paid is subject to the exchange of collateral.

In order to avoid any misunderstanding: without a change in the market value of the security sold (during the term of the repo trade), there would not be any collateralization at all which could be reported by market participants.

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

We agree that counterparties might wish to report the collateral separately from the underlying trades when the reporting of the collateral for net exposure is not directly allocated to a trade but is provided for the SFTs.

In our view a broad range of type of SFT should be allowed to collateralize based on the net exposure, beyond open repo trades between two counterparty and some types of triparty repos (as point 252 (b) states) or open securities lending trades collateralised through securities (as point 252 (c) states).

In addition, we would comment on the reporting deadline on the collateral information when the trades involve a collateral not known by the reporting deadline at the end of T+1. In our understanding, this information would be reported at the latest at the end of value date (intended settlement date of opening leg). A further day (value date + 1) would enable the counterparty to have the necessary time to collect market value information of the collateral at the value date (available not before the closing of the reference market) and report it in an appropriate timeframe.

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.

The cash can be used as an alternative to securities.

In some circumstances, the use of cash as collateral to a repo trade may be the only acceptable alternative on a temporary basis in the event that the counterparty has no collateral eligible securities available to be placed in collateral on that specific day, according to some national rules.

At that point, the value of the collateral is temporarily integrated with the cash notwithstanding any contractual rules, provided it is for a limited time.

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.

No, we do not believe that an aggregate data reporting facilitates the reporting.

Should the aggregation be required, it will improve costs: initial cost for the development of the reporting and on-going cost for control procedures.

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.

The scope of collateral re-use reporting needs clarification.

In our understanding, article 4 of the Annex VIII of the draft RTS requires information in case of reuse on individual financial instruments received under a collateral agreement distinguishable from other assets. However, in the RTS and ITS annex, in light of FSB work, the scope of collateral re-use reporting appears to be wider.

We understand the approach however the scope on re-use should be limited to the one requested by art. 4(9)(b) of SFT regulation.

Additionally, in this latter case, it is not clear whether the information of re-use of cash collateral requested is limited to securities lending, as indicated in the SFTR-table available in the Excel file, or it applies to all SFTs.

We suggest that ESMA should wait the outcome of FSB work before developing a position on the matter while following a gradual approach. The Annexes VII (ITS) and VIII (RTS) should be updated correctly. For example the type of collateral component (Table 4 – re-use data, field n. 5) should be limited only to securities in the drafted ITS. In addition, it should drop fields 10 to 12 requested for each cash-collateral component.

Finally, where the collateral re-use would be reported independently of the underlying trades and the counterparty receiving the financial instrument as collateral, it should be noted this would result in an excessive and unnecessary burden for UCITS funds and other similar funds where the re-use of a financial instrument is fully excluded by European or national provisions

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?

As expressed above, we believe that the Re-use should not necessarily be reported separately. As a direct consequence, we believe that the same approach should be given to the re-use of collateral.

However, should ESMA consider it important to report it separately, we would suggest to ask for the reporting of the collateral re-use in a separate message.

(See also our reply to Q34)

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

A monthly reporting on re-use would be welcome as it would reduce the on-going cost, without impacting the need for analysis and despite the fact that the development costs would remain.

Additionally, considering the element of proportionality raised by ESMA in the perspective of reducing costs, we ask ESMA to consider the possibility to set reduced reporting duties for UCITS and AIFs that do not use substantial leverage.

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.

In line with our answer to Q64, we suggest dropping the information from the reporting framework information on the reinvestment of cash collateral.

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?

In line with our answer to Q64, we suggest dropping the information from the reporting framework information on the reinvestment of cash collateral.

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

Generally yes. However, ESMA should also consider the following points:

- Master agreements do neither consider the purchase price nor the securities subject to the purchase nor repurchase as collateral.
  Deeming the purchase price to be collateral might be right in an economic view but not a legal one.
- The securities bought through a repo are fungible. The buyer of the securities subject to the purchase and repurchase owns those securities for the lifetime of the transaction and is always

entitled to dispose of them, provided that it returns their equivalent at the closing of the transaction or in case of substitution.

If ESMA would consider to report the object of purpose as collateral, there would be to possible consequences:

(i) market participants will report "availability of re-use" at any and all times without any exception or
(ii) there will be a risk of confusion between collateral and collateral in re-use.

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

We do not agree with the proposed approach because:

- The standardisation by the use of a master agreement does not mean that all the trades executed under that master agreement are standardized; and
- The template of the master agreement is often amended to reflect the dedicated needs of the counterparties through bespoke clauses in the executed version of the agreement.

Based on these element, we consider that the reference to the existence of a master agreement cannot prejudge of the liquidity of the underlying instruments subject to the transaction

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

We consider that the reference to the version of the master agreement is not relevant and create useless burdens.

See also our reply to Q71.

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

We agree with most of the proposed fields.

We want however to insist once again the fact the LEI should be the most important identifier to identify the counterparties.

We would also suggest to add a field for LEI for CCPs.

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

No, we believe that several fields should be optional such as:

- "master agreement";
- "method to provide collateral"

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.

We support the ESMA proposal according to which the TRs provide standardized information to the reporting counterparties.

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.

We do support the approach as we consider that this would allow reducing costs.

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.

We agree with the principle.

However, as mentioned above, the limited alignment of fields between EMIR and SFTR is a real concern that should be addressed as a priority by ESMA.

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.

As expressed above, we consider that referring to branches is not accurate.

Considering the required level of reporting, we insist on the fact that the reporting should be at the level of the subsidiaries because they are the ones able to register for LEI.

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.

As a general principle, we are of the strong opinion that all types of authorities and regulators should have access to the trade data.

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.

We agree with the proposed access level.

Nevertheless, we insist on the fact that there should be no reference to branches but only to subsidiaries.

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