Deutsche Bank

EU Transparency Register ID Number 271912611231-56

European Securities and Markets Authority

CS 60747 – 103 rue de Grenelle

75345 Paris Cedex 07

France

Deutsche Bank AG

Winchester House

1 Great Winchester Street

London EC2N 2DB

Tel +44 20 75458000

Direct Tel +44 20 75451903

2016-04-22

Discussion Paper – Draft RTS and ITS under SFTR

Dear Sir/ Madam,

Deutsche Bank welcomes the opportunity to provide comments on the above consultation. We support ESMA's approach of seeking to ensure consistency with EMIR reporting requirements to the extent possible. Overall, we find the majority of ESMA's proposals are balanced but we do have a number of key suggestions aimed at improving the draft requirements.

I.   **Position level reporting vs transaction level reporting**
- ESMA considers the opportunity to establish complementary position-level reporting for SFTs. Reporting should be required at either the transaction or position level, rather than both. From a supervisory perspective, position level reporting would provide more meaningful information as this provides the end of day exposure against counterparties.
- It would also accommodate for the specificities of all types of SFTs, particularly margin lending as this does not operate on a transaction level basis and thus can only be reported at net cash balance level.
- Should transaction level reporting be required, position level reporting should not be an additional requirement. Position level information can be derived by the national authorities from the transaction level data provided by firms. An alternative approach would be to obtain the position level reports from the trade repositories, as currently done under EMIR.

II.   **The specificities of margin lending**
- In the context of margin lending, the concept of a transaction as it applies to either repurchase agreements or securities lending does not exist. There is a single cash

balance that the client holds with the prime broker, and this can increase or decrease depending on the activity of the client. From a reporting perspective there would be a single Unique Trade Identifier (UTI) for each client's cash balance that would then be modified when the balance increased or decreased, rather than a UTI provided for each increase or decrease in the overall cash balance.

- This has implications in terms of what type of reporting is actually achievable. Position level reporting would provide a solution for adequate and meaningful reporting for this type of transactions.

III. Collateral reporting and reporting of collateral re-use

- Ultimately all collateralisation is performed on a counterparty net exposure basis, and not at trade level. And collateralisation only takes place once title transfer of the loan has occurred thus there will generally always be mismatch data on a given day between the transaction and collateral data. Using UTIs or collateral pool identifiers to link collateral data with transaction data could lead to an unnecessary volume of potentiality inaccurate and misleading cross-reference identifiers that would ultimately provide limited added value to the national authorities.

- In parallel to this Discussion Paper, the Financial Stability Board (FSB) is currently consulting on possible measures of collateral re-use, which ESMA should take into account in its approach to SFTR reporting. DB is also responding to the FSB's consultation.

- Given the fungible nature of the assets used by firms, collateral re-use is very difficult to calculate at the transaction level and provides little value. Any re-use calculation performed to provide data should be done at the firm level (receiving the collateral) and not at counterparty level. It should also be calculated across all SFTs and not done for individual SFTs independently. The widely differing estimates that will be generated as a result of the assumptions proposed by the FSB raise questions about the usefulness of the re-use measures. Changes in imprecise measures might not be sufficiently robust to be utilised in the context of allowing the FSB to develop well-informed views on collateral re-use practices and, if deemed necessary and beneficial to financial stability, develop appropriate policy recommendations.

IV. Implementation challenges for third country jurisdictions

- While today's discussion paper does not address this issue, we wanted to voice our concerns regarding the impact for third country jurisdictions. As the SFTR replicates very closely the reporting regime under EMIR for securities financing transactions, this carries with it the same implementation challenges.

- In particular, it exempts members of the European System of Central Banks, European public bodies managing public debt and the Bank of International Settlements, but requires assessments the regulatory regime applicable to non-EU central banks and public bodies before they can be granted similar exemptions. These exemptions are likely to be granted only where equivalent rules are in place.

- Given that few jurisdictions have started to implement FSB requirements for SFT reporting regimes, it will be difficult in the short term for many jurisdictions to demonstrate equivalence and receive an exemption. The rules developed in the EU may influence the work and timeline of other jurisdictions. While this issue is embedded in Level 1, consideration should be given to a transitional period which would leave sufficient time for other jurisdictions to develop their own reporting framework. Agreeing internationally on the inconsistencies in reporting for SFTs would also be beneficial, and a framework to address any obstacles to sharing information should be developed.

Finally, we would like to point out that we are currently reviewing all the elements in the reporting tables as currently proposed by ESMA in the table of fields (DP Annexes) to determine the impacts to the business and the ability to implement and reconcile requirements. However, due to the length of the exercise and the short duration of the consultation, more time will be required to complete this work; we may provide additional elements to ESMA once it has been conducted.

We hope you find these comments helpful and we would be happy to provide further information on any areas not sufficiently covered.

Yours sincerely,

Daniel Trinder

Global Head of Regulatory Policy

Contents

Section 3 – Registration of Trade Repositories (TRs)

3.3 Existing provisions in RTS 150/2013 that would be amended for the purposes of RTS on registration under SFTR

Q1. Are these amendments to the provisions included in EMIR RTS 150/2013 sufficient to strengthen the registration framework of TRs under SFTR? If not, what additional provisions should be envisaged? What are the cost implications of the establishment of the provisions referred to in paragraphs 41-53? What are the benefits of the establishment of the provisions referred to in paragraphs 41-53? Please elaborate.

3.4 New provisions to be included in RTS on registration in SFTR

Q2. Are these procedures sufficient to ensure the completeness and correctness of the data reported under Article 4(1) SFTR? If not, what additional provisions should be envisaged?

Q3. What are the cost implications of the establishment of the provisions referred to in paragraph 56 to ensure the completeness and correctness of the data reported under Article 4(1) SFTR? Please elaborate and provide quantitative information to justify the cost implications.

Q4. Are these additional procedures sufficient to strengthen the registration framework of TRs under SFTR? If not, what additional provisions should be envisaged?

Q5. What are the cost implications of the establishment of the provisions referred to in paragraphs 58-65?

Q6. What are the benefits of the establishment of the provisions referred to in paragraphs 58-65? Please elaborate.

3.6 Requirements for extension of registration under SFTR

Q7. Do you agree with the information that should not be provided in the case of extension of registration? Please elaborate.

Q8. Are there additional provisions that should be removed / included? Please elaborate.

Q9. What are the benefits of providing less documentation? Please elaborate.

3.7 Format of the application under SFTR

Q10. Do you agree with the proposed format of the application for registration and the application for extension of registration? If not, do you consider that the format of the application for extension of registration should be different? What are the costs and benefits of the proposed approach? Please elaborate.

No comments.

Section 4 - Reporting

4.1 ISO 20022

Q11. Do you agree with the proposed technical format, ISO 20022, as the format for reporting? If not, what other reporting format you would propose and what would be the benefits of the alternative approach?

Whilst a standardised format is in most cases sensible, and ISO 20022 is already used under certain reporting rules in the EU, there should be flexibility to accommodate for smaller counterparties and other standards should be considered.

Smaller counterparties, who may not have the infrastructure or resource to support the ISO20022 format, should be allowed to use alternative formats. Further, there are some general concerns related to the proposed ISO20022 format that would have to be addressed.

First, while Europe is increasingly mandating the use of the ISO20022 format, this does not seem to be the case for other major jurisdictions. The FpML is the predominant messaging standard for OTC derivatives, facilitating both the electronic confirmation and electronic reporting of transactions. CFTC have endorsed FPML as the derivative messaging standard, and SEC is expected to follow suit. The Hong Kong Trade Repository, owned and built by the Hong Kong Monetary Authority (HKMA), uses FpML too.

Second, FpML has the benefit of having been built in collaboration with industry participants to build a messaging language and structure that truly reflects not only the products but also supports lifecycle events for that product. A large number of dealers in the industry use standards based on FpML to represent trades and move them from one system to another within their organisations, and moving a message from FpML to ISO20022 carries translation risks.

If prescribed as a mandatory format it will be important to ensure that the relevant ISO standards are flexible and can be adapted in a timely manner to changing market needs. This will have to be reflected in the ISO governance arrangements.

While we understand that both formats are not necessarily inconsistent, it would be important to ensure global convergence towards a single globally agreed format.

Q12. How would the proposed format comply with the governance requirements in paragraph 75? Please elaborate.

Q13. Do you foresee any difficulties related to reporting using an ISO 20022 technical format that uses XML? If yes, please elaborate.

No comments.

4.2 Reporting logic

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)

Q14. Do you foresee issues in identifying the counterparties of an SFT trade following the above-mentioned definitions?

The definition of a Broker could be misleading given the different roles it plays within different SFTs. In the context of Prime Brokerage margin lending, a broker will act as a Prime Broker, however it will also be the Counterparty to the trade and not acting as an intermediary. In this regard, there should be a separate definition for Prime Broker to avoid this confusion and to ensure a clear understanding of what capacity firms are acting in with respect to the relevant SFTs.

In addition the inclusion of the term 'lending agent' in the broker definition seems to suggest that they are interlinked. In this regard, we suggest that this reference is removed from the broker definition.

Q15. Are there cases for which these definitions leave room for interpretation? Please elaborate.

Where an entity can perform multiple roles, the technical standards must make it clear that they apply to a counterparty acting in a specific capacity.

As per the response to question 14, there can be different roles of a Broker within the different SFTs and thus this could lead to interpretation challenges. It should be preferable to have a separate definition for a Prime Broker, as this will ensure that there is a clear distinction in identifying the role that the broker is performing in relation to margin lending.

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

Q16. Is it possible to report comprehensive information at transaction level for all types of SFTs and irrespective of whether they are cleared or not?

Typically, in the context of securities lending, transaction level information can be reported against the securities side of the trade for proprietary trading information on a T+1 basis.

Where the securities lending trade involves an agent lender, any non-propriety information will not be available for reporting to the borrower until this has been provided by the lender. There is little additional benefit (especially for match purposes) in the borrower reporting this non-proprietary data as the time of this will be substantially later than the level 1 text requires.

It also needs to be recognised that until title transfer of the security has taken place there is no exposure against the counterparty and thus no collateral will be provided. In this instance there will likely to be large volumes of data that will not have any reflection on financial stability and will not be matched to collateral until after settlement occurs. Thus these transactions will in effect be irrelevant until title transfer has taken place (settlement). In this regard collateral cannot be reported until title transfer of the securities lent has taken place, which will generally be later than T+1.

If the collateral information is available by the reporting deadline then it can be supplied. If not it should be possible to report that information which is known within the reporting deadline in a first phase and then supplement the report with the additional information when it becomes available in a second phase

In the context of margin lending the concept of a transaction as it applies to either repo or securities lending does not exist. There is a single cash balance that the client holds with the prime broker, and this can increase or decrease depending on the activity of the client. In this regard for margin lending this will be contingent on defining what the margin loan is and when it is made and whether it constitutes a position or a transaction, neither of which are

completely suitable terms. From a reporting perspective there would be a single Unique Transaction Identifier (UTI) for each client's cash balance that would then be modified when the balance increased or decreased, rather than a UTI provided for each increase or decrease in the overall cash balance.

Finally, it is also worth noting that depending on the number of SFTs, transaction level reporting is operationally very cumbersome. The key issue will revolve around the development of, and application of a UTI, and the large uncertainty around how it will be applied to multi-allocated transactions, with multi-Legal Entity Identifiers (LEIs). This will be particularly difficult in the case of multi-allocated tri-party transactions, further complicated by the fact that the level of collateral is unknown (specifically at asset class or ISIN level) until Settlement Day +1. (SD+1)

With the requirement for Trade Repositories (TR) to validate data and report on reconciled versus non-reconciled items together with the millions of trade and trade-events being captured daily, it is inevitable that reconciliation breaks will occur. This may lead to increased technology and operational costs for the industry to reconcile breaks and send corrected files, operations which would need to be performed sometimes several times for the same day's data.

Q17. Is there any need to establish complementary position-level reporting for SFTs? If yes, should we consider it for particular types of SFTs, such as repo, or for all types?

Reporting should be required at either the transaction or position level, rather than both.

Position level reporting would be preferable as this provides the end of day exposure against counterparties, and should be considered for all types of SFTs, specifically for margin lending as this does not operate on a transaction level basis and thus can only be reported at net cash balance level (that could be defined as a position).

It should also be taken into consideration that there is increasing demand from regulators to compress trades (it is required under EMIR for derivatives reporting for instance) but this is not necessarily done by all firms. In this regard, reporting at transaction level will lead to breaks in UTIs between counterparties. If reporting was at position level (i.e. the compressed level) this would be accommodated irrespective of whether a firm has implemented the compression or not.

It should also be noted that National Competent Authorities (NCAs) would receive significantly higher volumes of data if reporting were required at transaction level.

Should ESMA deem that transaction level information is required, position level reporting from firms should not come as an additional requirement. Position level information could be derived by the NCAs from the transaction level data provided by firms. An alternative approach would be to obtain the position level reports from the trade repositories, as currently done under EMIR.

Whatever approach is eventually chosen, it will be essential to ensure consistency between the different SFT products, as having multiple rules and obligations per product will make controls difficult to implement for the industry.

Q18. Is there any need to differentiate between transaction-level data and position-level data on loans from financial stability perspective? Please elaborate.

To monitor risk in the interest of financial stability, position level information would be the most relevant.

Q19. Would the data elements included in section 6.1 be sufficient to support reporting of transactions and positions?

More clarity would be helpful on what constitutes a position, as there may be different interpretations across different counterparties. For example, would two transactions with one counterparty that have different rates be considered two different positions? Or would it be considered one position with a weighted average rate?

DB is currently reviewing all the elements in the reporting tables as currently proposed by ESMA in the table of fields (DP Annexes) to determine the impacts to the business and the ability to implement and reconcile requirements. However, due to the length of the exercise and the short duration of the consultation, more time will be required to complete this work; we may provide additional elements to ESMA once it has been conducted.

At this stage it already appears that there is more data required than what would be relevant Where possible ESMA should source information from market infrastructure metadata sources. Wherever data elements can be derived from other data elements, this option should be used. For instance, when an ISIN is provided, there should be no need to report the currency of quotation, the issuer LEI, the jurisdiction of the issuer or the maturity date as the ISIN intrinsically already contain all that data. In any case, the collateral data in table 6 should consider also collateral baskets.

Q20. Would the data elements differ between position-level data and transaction-level data? If so, which ones?

The data elements have been defined based on transaction level reporting. For position level reporting we do not expect the need to report a UTI because this is related to a transaction.

Q21. Would the proposed approach for collateral reporting in section 4.3.5 be sufficient to accurately report collateral data of SFT positions? Please elaborate.

In relation to the concepts discussed in section 4.3.5, some are sufficient for reporting and some are overly onerous and unnecessary. Primarily the concept of reporting collateral on a end of day position basis is welcome. However the proposal to try and link SFTs to collateral in various ways, including the introduction of a collateral pool identifier, is overly complex and unnecessary. It will lead to cumbersome and inaccurate reporting. In this regard any linkage of transaction and collateral data should be done at the counterparty LEI level.

Another point to take into consideration is that Agent Lenders will not have authority to report transactions, or collateral in any form for non-EU or out-of-scope entities without express delegated reporting authority being given, which is unlikely.

4.2.2 Reporting logic for business and lifecycle events

Q22. From reporting perspective, do you foresee any significant benefits or drawbacks in keeping consistency with EMIR, i.e. applying Approach A? What are the expected costs and benefits from adopting a different approach on reporting of lifecycle events under SFTR with respect to EMIR? Please provide a justification in terms of cost, implementation effort and operational efficiency. Please provide concrete examples.

In order to reduce implementation burdens it would be preferential to reuse, where possible, existing infrastructure that has been implemented in the course of compliance with EMIR reporting requirements. In this regard, Approach A would be the initial preferred approach.

However, it also has to be recognised that the individual SFT products are not only unique between themselves, but also whole different to the derivatives that are currently reported under EMIR. In this regard, the separate templates for repo, securities lending and margin lending that have already been proposed (with whatever alterations are required to make them useable for the relevant SFT reporting) should be used for any SFT reporting elements. In addition it will also be required to ensure that all the specific trade event requirements are taken into consideration for each of the individual SFTs, as again these may differ between SFTs and will certain differ from the trade events currently used for derivatives. To this end Approach B does accommodate these trade events more accurately, however, work still needs to occur to ensure full completeness of events for each SFT.

Taking all this into account, the desired approach would ultimately be a combination of Approach A and B, whereby firms and reuse the messaging infrastructure that is in place for EMIR but ensure that the reporting templates, trade events and formats are all specific to the individual SFTs so that the implementation of the reporting requirements can be achieved in line with how the SFT market and systems operate.

Q23. Do you agree with the proposed list of "Action Types"? If not, which action types should be included or excluded from the above list to better describe the SFT? Please elaborate.

Further time is required to review the proposed Action types. At this stage, the reporting of some action types such as settlement, marks, re-rates, partial terminations or cancellations, as well an agent lender allocations to name only a few are not clear as they are not listed as 'action types' proposed under SFTR.

There will generic action types that can be used across products as well as product specific action types that may be required. In order to ensure that all these specifics are given appropriate consideration in the context of the application of the rules, we propose to review these in more detail and provide a more detailed response at a later date.

Q24. Do you foresee any benefits or drawbacks of implementing the proposed reporting logic of event types and technical actions (Approach B)? Please elaborate.

Although Approach B does, on the face of it, seem to align itself more to the nature of the SFTs lifecycle events, the concept of providing different reporting formats would be more complex, open to implementation challenges and cost more to build. In addition, the event types and technical actions are not relevant for all SFTs, for example margin loans, and thus it would make implementation in this regard difficult to achieve.

Having said this, it does provide a good foundation for further review and incorporation of these event types into an implementation approach that is more aligned with the processes that are currently utilised for EMIR.

Q25. Do you agree with the proposed list of event types and technical actions? If not, which ones should be included or excluded?

The proposed event types and technical actions do describe the lifecycle events for the relevant SFTs in a more concise and accurate manner that those currently proposed under approach A. However, they are still not 100% accurate and will require more time to review to ensure that all SFT specific event types are accurately captured in a manner that will be easily implementable.

In this regard a few clarification questions are highlighted below:

Regarding technical actions specific to securities lending, it is unclear which 'event type' partial returns would be reported under or if marks need to be included on the trade or are taken into account from collateral movements. Clarity would be welcome on how settlement events should be reported. Partial returns should be moved from the adjustment lifecycle event into the termination lifecycle event (with the assumption that they are currently included as a cash lifecycle event and collateral lifecycle event – paragraph 131).

Clarity on the reporting of "open trades" would be welcome. Will a transaction performed on an open basis always retain an original UTI for its life or is a new UTI expected for each day it '"rolls"? Would a close-out of an open trade constitute a modification or new transaction?

There will be generic action types that can be used across products as well as product specific action types that may be required. In order to ensure that all these specifics are given appropriate consideration in the context of the application of the rules, we propose to review these in more detail and provide a more detailed response at a later date.

Q26. Do you foresee any need to introduce a unique reference identifier for the lifecycle events or for technical actions? Please elaborate.

Having a lifecycle identifier will help control lifecycle events and mitigate risk.

The same lifecycle events for securities lending can occur on the same day, a primary example would be cancellations of partial returns, rerates and marks. As such there may be a need to introduce a unique reference identified for lifecycle events or technical actions.

In the context of margin lending however, the net cash balance can change up or down daily and throughout the day. In this regard, an end of day position report would avoid having to report these repeated modifications, as they would create 'noise' for the NCAs and not provide any meaningful additional information in relation to financial stability, therefore a lifecycle identifier adds little value in this instance.

4.2.3 Direction of the trade

Q27. From reporting perspective, do you foresee any drawbacks in keeping consistency with EMIR? If so, please indicate which ones?

Data should not be required to be transformed into a representation that is inconsistent with the legally agreed terms of the transaction. Doing so risks the inaccurate translation of the trade terms and impedes the ability to reconcile reported data against source systems,

between counterparties and against the actual terms of the transaction executed in the confirmation.

With regards to terminology, whilst we understand the justification of using the buyer and seller terminology (i.e., to remain consistent with EMIR) and a mapping could be used in this regard, this is not the terminology that is used within the SFT market and thus the mapping could be open to incorrect interpretation or implementation. The terminology used within the market is "borrower" and "lender" and it would be best to remain consistent with this.

Q28: Are the proposed rules for determination of buyer and seller sufficient? If not, in which scenarios it might not be clear what is the direction of the trade? Which rules can be proposed to accommodate for such scenarios?

The use of inappropriate terminology might lead to confusing and potentially incorrect reporting if incorrect interpretations are made.

The market generally works for all SFT whereby you have an asset provider and a collateral receiver – termed the lender, and an asset receiver and collateral provider – termed a borrower. Therefore a mapping will be required to covert the market convention terminology into the reporting terminology i.e. buyer = borrower and seller = lender.

In this context, the proposed definitions for securities lender and securities buyer are incorrect. The counterparty that lends the securities is the lender (seller) and the counterparty that borrows the securities is the borrower (buyer). For margin lending the definitions are generally correct. The counterparty lending the cash is the lender (seller) and the counterparty borrowing the cash is the borrower (buyer).

Q29: Are the proposed rules consistent with the existing market conventions for determination of buyer and seller? If not, please provide alternative proposals.

The proposed rules are not consistent with existing market conventions. The existing market convention is to use the terminology borrowers and lenders, consistent with their role in the SFT market.

4.2.4 Trade scenarios

4.2.4.1.1 Repo trade without central clearing

Q30. Are you aware of any other bilateral repo trade scenario? With the exception of tri-party agents that are documented in section 4.2.5, are there any other actors missing which is not a broker or counterparty? Please elaborate.

In principle, the descriptions of the two bilateral repurchase transactions (repo) scenarios seem accurate. We would however point out that the concept of a broker taking principal risk is not a common scenario in repo trades, so scenario 2 seems less relevant. The description of counterparty 3 as a broker acting on own account also seems inconsistent with ESMA's definition in paragraph 97 of a 'broker', which we understand aims to cover agents only.

Q31. 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.

In fact, the technical standards should not distinguish between repo and buy/sell-back trades. These are not substantially different instruments and it is not justified to duplicate the reporting framework. Provided that a sell/buy-back is documented, the only differences with

a repo are operational. There is no compensatory payment triggered by an income payment on the collateral, and margin and substitution are achieved by early termination and replacement. Compensatory payments are not reportable events in themselves, and that repurchase transactions can also use early termination and replacement. If a distinction is drawn between repurchase transactions and sell/buy-backs, it may create a false picture of the market and its behaviour.

For the same reason, we recommend merging the two reporting templates for repo and buy/sell-backs into a single template.

The exceptional case of undocumented buy/sell-backs simply consists of two cash trades, one spot and the other forward, and is likely not seen as a SFT.

4.2.4.1.2 Repo trade with central clearing

Q32. Do you agree with the description of the repo scenarios?

We broadly agree with this description, it should be considered that the clearing models of SFTs are very much at a conceptual stage in Europe so far so it is difficult to opine on exact flows.

Q33. Are you aware of any other repo scenarios involving CCPs?

Yes, CCPs may elect to act as principals in the repo market.

Q34. Are there any other scenarios that should be discussed? Please elaborate.

No comment

Q35. Do you consider that the documented scenarios capture accurately the conclusion of buy/sell-back trades? If not, what additional aspects should be considered?

Yes.

Q36. According to market practices, can buy/sell-back and sell/buy back trades involve a CCP?

Yes, for instance Italian debt traded on CCP via the platform MTS.

Q37. Are there any other actors missing which are not mentioned above, considering that tri-party agents are be covered in section 4.2.5? Please elaborate.

We believe all are covered, and potentially the scenario described in point 152 covers any likely future agency model that could evolve.

4.2.4.2.1 Bilateral securities lending scenarios

Q38. Are there any differences in the parties involved according to the different agency lending models?

The broker/agent does not exist under this scenario. From a trade booking perspective, where the counterparties are disclosed in an agent lender relationship, the trade is booked between the 2 counterparties referencing the agent lender. However, where counterparties

are undisclosed, the trade booking is only ever against the agent lender. Confidentially clauses in the legal agreements prevent the front office trade bookings between the borrower and the undisclosed principle lender.

Subsequent reporting is provided by the agent lender to provide allocation breakdowns at the principal lender level which is held outside the trading system, but this will not amend the original trade booking with the agent lender (this trade continues to persist and is amended irrespective of the lender allocations). The trade booking against the agent lender is also where the exposure is calculated and collateral is delivered against.

Q39. When would the both counterparties know the other's identity in an undisclosed lending agreement?

The Agent lender will know the identity of the borrower when the trade is agreed. As a borrower, the earliest that the lender would be able to send the allocation files would be settlement date + 1, but it could be later than this depending on the timing of their file runs. Once this has been received it needs to be processed though the borrowers systems before it is available to be reported, and additional process is required to achieve this as the allocation information is held outside the trading system thus mapping process will need to occur. In this regard the data would likely only be available for reporting by the borrower on settlement date + 2 at the earliest. And possibly after if there is a delay in receiving the files from the agent.

In addition as the agent may allocate a portion of the original trade exposure to an exempt reporting counterparty, the allocation that the borrower may report will not total the original trade against the agent lender, leading to the inability to match the trade.

Trade data will be therefore incomplete, e.g. the identity of undisclosed client or collateral will be missing. Reporting on SD+1 (at least a separate collateral report) would be preferable, as at this point in time the exact collateral and collateral position are known.

Q40. What other solution would you foresee for the reporting of trades involving the agent lender? Please elaborate.

As the information on the principal lenders is proprietary information of the agent lender, over which the borrower has no control or ability to know if it is accurate, the only way the borrower can report this is if the agent lender provides it. Therefore, the obligations of the borrower should be solely to report the trades against the agent and the obligation of the agent should be to report the trade it has against the borrower and in addition the trade the principal lenders have against the borrower post the agent's allocation. This could be achieved by a single sided reporting obligation in these trading scenarios against the agent lender.

4.2.4.2.2 Securities lending scenarios involving central clearing

Q41. Would an open offer clearing model possibly apply to securities lending too?

We do not currently have enough information about future CCP models to be able to comment at this time.

Q42. Would a broker be involved in addition to lending agent in such a transaction?

Q43. 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?

Q44. In the case of securities lending transactions are there any other actors missing, considering that tri-party agents will be covered in section 4.2.5?

Please see our response to Q41.

Q45. What potential issues do reporting counterparties face regarding the reporting of the market value of the securities on loan or borrowed?

We would like to highlight that the market value (MV) of any securities collateral will by its very nature change every day which seems to require every collateral position to be re-reported each day. One collateral basket may be attributable to numerous LEIs – some which may be out-of-scope for reporting due to their non-EU or Central Bank status. Also, some basket "participants" may not have a LEI. This may imply that Agent Lenders would only report for those entities in scope; however an EU borrower/repo counterparty would need to report the entire trade. There will therefore be a clear mis-match when attempting to reconcile the UTI at any level.
It also needs to be considered that firms may have different data sources for market prices and thus may provide different prices for the same UTI. It is only the price that the trade is being valued at for exposure purposes that is agreed between the counterparties and this includes a margin element in addition to the market price.

The requirement to report this data daily for every trade indicates that the most beneficial reporting format would be a daily end of day trade or position snapshot, rather than a trade event reporting requirement, as this would only lead to the same trade being reported numerous times for different reasons and will make it very difficult for the NCAs to determine what has actually take place against the trade.

Thus, an alternative solution thus would seem to be that a daily end of day report of the trade is provided with flags to indicate what fields have been amended that day. This will also greatly simplify the implementation requirements for firms and make review of the data much more clear and efficient for national authorities.

4.2.4.3 Unsecured securities or commodities lending/borrowing

Q46. Do such securities lending transactions exist in practice?

It is not common market practice to do unsecured lending transactions, though they do occur.
SFTs concluded in agency securities lending programmes are generally collateralised, except where the borrower of the securities fails to deliver collateral transaction. It is questionable if the latter would require additional reporting.

Q47. Do you agree with the proposal to explicitly identify non-collateralised securities or commodities lending transactions in the reporting fields? Please elaborate.

As stated in response to question 46, there are instances where unsecured securities lending transaction occur and thus there is a requirement to separately identify these, to ensure that the distinction of securities for which the collateral information has been excluded in error is made in comparison to those which are not intending to be collateralised.

Q48. Would it be possible that an initially unsecured securities or commodities lending or borrowing transaction becomes collateralised at a later stage? Please provide concrete examples.

This could happen, though it would be rebooked as a new collateralised trade.

4.2.4.4 SFTs involving commodities

Q49. Which of the scenarios described for securities lending (Section 4.2.4.2), repo and buy-sell back (Section 4.2.4.1) are currently applicable to commodities financing transactions? Please provide a short description of the commodity financing transactions that occur under each scenario and the involved actors.

Q50. Are you aware of commodity financing transactions that would fall in the scope of the Regulation but are not covered in the scenarios described for securities lending (Section 4.2.4.2), repo and buy-sell back (Section 4.2.4.1)? If yes, please describe the general characteristics of such a transaction.

Q51. Are the types of transactions recognised sufficiently clear for unambiguous classification by both reporting counterparties of commodity financing transactions into one of the types?

Q52. What additional details may help to identify the type of transactions used?

Q53. What are the main types of commodities used in SFTs?

Q54. How often, in your experience, are other commodities used?

Q55. In your experience, what share of the transactions involves standardised commodity contracts, such as most traded gold and crude oil futures? Please provide concrete examples.

Q56. In your experience, what share of the transactions involve commodities that meet the contract specification for the underlying to derivative contracts traded on at least one [EU] exchange?? If yes, please elaborate and provide concrete examples.

Q57. Do the proposed fields and attributes in Section 6.1 sufficiently recognize the characteristics of commodity financing transactions? Please describe any issues you may see and describe any reporting attributes that should be added in order to enable meaningful reporting of commodity financing transactions.

Q58. Could all scenarios described for securities lending, repo and buy-sell back theoretically apply to future forms of commodities financing transactions?

Q59. Should other scenarios be considered? If yes, please describe

Q60. Would you agree that the ISIN could be used to uniquely identify some commodities used in SFTs? If yes, which one and what prerequisites would need to be fulfilled? If no, what alternative solution would use propose for a harmonised identification of commodities involved in SFTs?

Q61. Would the classification as described in RTS 23 of MiFIR be the most effective way to classify commodities for the purposes of transparency under SFTR?Q62.

Q62. Is there another classification that ESMA should consider?

Q63. Are there transactions in which a pool of commodities is financed that the reporting needs to take into account? Please provide concrete examples.

No comments.

4.2.4.5.1 Margin lending

Q64: Do you agree with this basic scenario? If no, please explain what changes would need to be made to the scenario.

We agree with the basic scenario for prime brokerage margin lending, but the assumption in the scenario seems to assume margin lending is done on a "trade" by trade basis rather than as a portfolio.This is inaccurate; as the portfolio will only ever have one net cash balance (either a debit or credit).

Q65: Are there other entities that do not act as counterparties but can be involved in the transaction chain (e.g. brokers or intermediaries)?

Occasionally triparty custodians hold the collateral but are not counterparties in the lending process.

Q66: Are there standard margin agreements used in the market? If yes, which ones? If no, are there standard elements in margin agreements in the EU that are noteworthy from a financial stability perspective and not included in the list of questions or current data tables included in Section 6.1?

All Prime Brokerage agreements facilitate margin lending, securities lending, custody and settlement. However, the formats vary from bank to bank. In this regard, although Prime Brokerage agreements are generally bespoke per prime broker, it is important to note that they contain similar information that determines the same economic outcome, but in a non-standard format.

Q67: Are there margin loans that do not have a fixed maturity or repayment date, or other conditions in the agreement on which full or partial repayment of the loan can be conditioned?

Margin lending agreements in prime brokerage relationships do not have fixed maturity or repayment dates. Borrowers can increase (and decrease) the amount they borrow subject to a number of constraints which include the credit risk profile of the fund as determined by the prime broker and the consequential collateral required to cover such lending. For example, the value of the loan is linked to the value of assets held in the PB account. As the loan value is not transaction based and based on an overall debit balance, if the value of the assets reduces sufficiently to generate a margin call the client can choose to reduce the debit balance in order to meet the margin call.

As term dates are not imposed on borrowers they can repay at will. From the prime brokers perspective the contractual terms of the loan will be contained in the PB agreement whereby the loan is typically callable by the lender on demand, or with pre-agreed minimum number of days notice.

Q68: Are floating rates used in margin lending transactions? Are there specificities that ESMA should be aware of regarding interest rates in the context of margin lending transactions?

Financing charges typically take the form of a floating rate benchmark with a fixed spread added to it. As this is a billing concept, there may be different benchmarks relating to different underlying currencies that make up the margin loan, however, the margin loan itself is recorded in the funds base currency as a single cash balance.

Q69: What potential issues do reporting counterparties face regarding the reporting of margin account/credit balances?

A prime brokerage account consists of a portfolio of assets (securities and/or cash) over which the prime broker/lender has a security interest and which secure an aggregate amount of liabilities (borrowed securities or cash). A counterparty's cash position will either be net positive or net negative and will then fall into the asset or liability bucket. All cash is aggregated in the account so the bifurcation of cash into short sale proceeds and a gross balance is an artificial one and exists solely for the purposes of billing the client for the lender's potential collateral obligations elsewhere. Reporting this division would thus be meaningless for regulators and would not aid their assessment of financial stability.

Q70: How is information regarding the market value of short positions in the context of margin lending used by the lender (if at all)?

Short market value equates to the value of securities that the client has sold short. In this regard, to settle the short sale the client would have borrowed the securities from its prime broker. The value of the securities lent to the counterparty forms one of the liabilities that the pool of assets in a prime brokerage account secure.

Q71. What kind of provisions do lenders have in place to limit or mitigate client losses from short positions?

Short positions must be collateralized by the portfolio of assets in the prime brokerage account to the tune of 100+X% where X is a haircut/margin requirement generated by a portfolio based margin/collateral methodology. These methodologies are specific to each lender/prime broker.

4.2.5 Tri-party agents

Q72. Do you foresee any issues with reporting information on SFT involving tri-party by the T+1 reporting deadline? If so, which ones – availability of collateral data, timeliness of the information, etc.? Please elaborate.

In the context of securities lending, Tri-party agents do not generally report collateral allocations to the borrower until after the title transfer of the securities lent has taken place. There is no concept of pre allocation collateral basket or pool reporting. The report of these allocations is therefore usually on settlement date + 1 at the earliest.

In addition the collateral allocation reports generally only provide a value against the agent lender, with no specific breakdown at International Securities Identification Number (ISIN) level or by principal lender.

4.3 Content and structure of the SFT report

Q73. Would you agree with the proposed split between the counterparty and transaction data?

We agree with the proposed split of counterparty and transaction into different tables. However, careful consideration needs to be taken when determining the most appropriate counterparty to provide accurate and timely information for these tables.

It is not clear how the Counterparty Data table 1 cross-references the transaction data table 2 due to the absence of UTI in Table 1.

All data elements are currently under review and additional comments may be provided on the suitability of these elements once this review has been completed.

4.3.2 Branches

Q74. Is the reporting of the country code sufficient to identify branches? If no, what additional elements would SFT reporting need to include?

The LEI Regulatory Oversight Committee is currently working on a system to identify branches within the Global LEI System. Using this consistent global approach to identify branches for the purpose of SFTR reporting would be preferable. Creating an interim solution should be avoided.

Q75. Do you foresee any costs in implementing such type of identification?

Q76. Would it be possible to establish a more granular identification of the branches? If yes, what additional elements would SFT reporting need to include and what would be the associated costs?

Please see our response to Q74.

Q77. What are the potential benefits of more granular identification of branches? Please elaborate.

Please see our response to Q74.

4.3.2.2 Reporting of trades concluded by branches

Q78. Are there any situations different from the described above where the actual transfers between headquarters and branches or between branches can be considered transactions and therefore be reportable under SFTR? Please provide specific examples.

None that we are currently aware of.

4.3.3 Beneficiary

Q79. Are there any other cases which are not identified above, where the beneficiaries and the counterparties will be different? Please elaborate.

We do have instances where the beneficiaries and the counterparties are not the same. An example would be an Irish Trust structure where the Trustee and the Manager are the counterparty/contracting entities as they are the legal personalities of the trusts, yet the trusts are effectively the beneficiaries of the rights extended to them under the contract

4.3.4 Linking of SFTs

Q80. Do you agree with the proposal to link the legs of a cleared transaction by using a common identifier?

It is challenging to implement with limited benefit. The beta and gamma trades are reported by the CCP. They are new trades thus have new UTIs. To build identifiers across the dead alpha trade and the new beta and gamma trades would be burdensome as we do not currently connect trades cancelled and quoted to the CCPs. From a supervisory perspective, the added value of that extra data is not clear.

Q81. Could you suggest robust alternative ways of linking SFT reports?

Please refer to our response to Q80.

4.3.5 Collateral reporting and reporting of collateral re-use

4.3.5.1.2 Trade-based collateral allocation or collateral allocation based on net exposure

4.5.5.1.2 Trade-dated collateral allocation and value-dated collateral allocation

Q82. Are the different cases of collateral allocation accurately described in paragraphs 221-226? If not, please indicate the relevant differences with market practices and please describe the availability of information for each and every case?

The collateral allocation scenarios overcomplicate the process of collateralising for securities lending trades. Ultimately all collateralisation is performed on a counterparty net exposure basis, and not at trade level. And collateralisation only takes place once title transfer of the loan has occurred thus there will generally always be mismatch data on a given day between the transaction and collateral data. Therefore trying to determine the relationships between trades and collateral will in our view not add any benefit and will likely provide for less efficient reporting, and well as possibly confusing outputs for the NCAs. All linkage of transaction data and collateral data should therefore be done at the counterparty LEI level, and should not try to add in any additional layers of interpretation or complexity.

The definitions are confusing and open to interpretation in the context of different SFTs. It appears as though collateral basket could be referring to a collateral schedule for securities lending, it is more relevant for repo transactions. ISIN level information for the securities in the collateral schedule for securities lending is not available, it is just a schedule of eligible collateral that have been negotiated between the counterparties for all exposure. It is not trade specific.

Collateral pool appears to refer to tri-party securities lending. However, this again is related to the delivered collateral, not anything that is available to deliver at a later date.

However, it is unclear where bilateral securities lending collateral is included in any of these definitions. Where a tri-party agent is used, the borrowers reporting of collateral will be

reliant on the agent providing the collateral data. As described in previous question responses this information is generally only provided post settlement date.

4.3.5.1.3 Elements of collateral to be reported

Q83. Is the assumption correct that manly securities lending would require the reporting of cash collateral? If no, for which other types of SFTs is the cash collateral element required? Please elaborate.

The assumption is correct. Our securities lending transactions cover both, cash and securities collateral. In addition, repo/reverse repo transactions would require reporting of cash collateral.

Q84. Does the practice to collateralise a transaction in several amounts in different currencies exist? Please elaborate.

Yes.

Q85. Do you foresee any issues on reporting the specified information for individual securities or commodities provided as collateral? If yes, please elaborate.

This information is potentially more granular than the data actually available. For instance the haircuts are usually agreed by asset class rather than ISIN for securities lending trades, and on a portfolio basis not ISIN level for margin lending.

The Issuer LEI should not be required. It will be almost impossible for a counterparty to a transaction, that the issuer of the collateral is not party to, to require that issuer to provide an LEI. As the issuer has not requirement to report they have no obligation to obtain a LEI.

Availability of collateral re-use is contractually agreed at counterparty level and thus should not be associated with a given ISIN.

The collateral element in Table 9 needs to recognise that collateral in securities lending transactions or reverse repo transactions can be multi-currency hence the quantity or nominal amount of the security or commodity used as collateral is not necessarily a meaningful figure.

Because basket trades (collateral) are widely used it is not straightforward to define collateral quality, issuer LEI, Jurisdiction of Issuer, Maturity Date etc.

Q86. Are there any situations in which there can be multiple haircuts (one per each collateral element) for a given SFT? Please elaborate.

Yes. If collateral information is at ISIN level, each collateral element could have a different haircut.

Q87. Would you agree that the reporting counterparties can provide a unique identification of the collateral pool in their initial reporting of an SFT? If no, please provide the reasons as to why this would not be the case.

Ultimately all collateralisation is performed on a counterparty net exposure basis, and not at trade level. And collateralization only takes place once title transfer of the loan has occurred thus there will generally always be mismatch data on a given day between the transaction and collateral data. Therefore trying to determine the relationships between trades and

collateral will add limited benefit and will likely provide for inefficient reporting, and well as confusing outputs for the national authorities.

All linkage of transaction data and collateral data should therefore be done at the counterparty LEI level, and should avoid the risk of adding in any additional layers of interpretation or complexity.

Q88. Are there cases where a counterparties to a repo, including those executed against a collateral pool, would not be able to provide the collateral with the initial reporting of the repo trade? If yes, please explain.

On T+1 only the high level "composition of basket" information is available. For instance a particular triparty reverse repo may have multiple asset classes, multiple currency collateral. Collateral, particularly on tri-party trades is generally not known or allocated to underlying clients until SD+1.

Q89. Are there any issues to report the collateral allocation based on the aforementioned approach? Please elaborate.

Please see our response to Q87.

Q90. In the case of collateral pool, which of the data elements included in Table 1 would be reported by the T+1 reporting deadline? Please elaborate.

As collateral in a securities lending transaction is not known or delivered until title transfer of the loan have taken place, none of the elements will be available to be reported by T+1.

Q91. Which option for reporting of collateral would be in your opinion easier to implement, i.e. always reporting of collateral in a separate message (option 2) or reporting of collateral together with other transaction data when the collateral is known by the reporting deadline (option 1)?

Option 2. Collateral is currently reported separately for EMIR; therefore consistency should be sought.

Q92. What are the benefits and potential challenges related to either approach? Please elaborate.

Due to the inability to report trade and collateral data together for the majority of SFTs, option 2 may potentially be the only viable option. This would also have the added benefit of retaining consistency with EMIR.

Q93. Do you foresee any challenges with the proposed approach for reporting updates to collateral? What alternatives would you propose? Please elaborate.

We agree that daily position data of the collateral (option 2) will be the simplest and most efficient means of reporting updates to collateral. This would also have the added benefit of retaining consistency with EMIR.

Q94. Is it possible to link the reports on changes in collateral resulting from the net exposure to the original SFT transactions via a unique portfolio identifier, which could be added to the original transactions when they are reported?

All options are problematic in our view. As commented on in previous question responses, the key element to collateralization of SFTs is the cover a counterparty's net exposure.

Using UTIs or collateral pool identifiers to link collateral data with transaction data could lead to an unnecessary volume of potentiality inaccurate and misleading cross-reference identifiers that would ultimately provide limited added value to the NCAs.

Ultimately, for securities lending, all collateralization is performed on a counterparty net exposure basis, and not at trade level. And collateralisation only takes place once title transfer of the loan has occurred thus there will generally always be mismatch data on a given day between the transaction and collateral data. Therefore trying to determine the relationships between trades and collateral will not add any benefit and will likely provide for inefficient reporting, and well as confusing outputs for the NCAs.

Given this, all linkage of transaction data and collateral data should therefore be done at the counterparty LEI level, and should not try to add in any additional layers of interpretation or complexity.

Q95. Do you foresee any difficulties related to the linking of the collateral report to the underlying SFTs by specifying UTIs of those SFTs in the collateral report?

Please see comments in response to Q94.

Q96. Are there additional options to uniquely link a list of collateral to the exposure of several SFTs to those specified? If yes, please detail them.

Please refer to our response to Q93, linkage of transaction data and collateral data should therefore be done at the counterparty LEI level.

Q97. What would you deem to be the appropriate option to uniquely link collateral to the exposure of several SFTs? Are you using any pro-rata allocation for internal purposes? What is the current market practice for linking a set of collateralised trades with a collateral portfolio? Please elaborate.

All linkage of transaction data and collateral data should be done at the counterparty LEI level, and should not try to add in any additional layers of interpretation or complexity.

In the context of agency lending, the clients of the agent lenders – the lenders – are the beneficial owners. The collateral pool is always linked to one SFT only. However, for this one SFT, the collateral basket could be allocated across multiple beneficial owners, i.e. multiple LEIs.

Q98. Do you foresee any issues between the logic for linking collateral data and the reporting of SFT loan data? Please elaborate.

All linkage of transaction data and collateral data should be done at the counterparty LEI level, and should not try to add in any additional layers of interpretation or complexity.

4.3.5.4 Special case of margin lending

Q99: Do you agree with the description of funding sources mentioned above?

As acknowledged by ESMA, lenders might not be able to determine the specific funding sources attributed to each loan. Firms fund themselves across all products on an aggregate basis and there is no link between any funding trade and an SFT with a client.

If we were to provide this data there would be no exact measure thus it would be methodology based and all PBs would use different proprietary methodologies to provide this data, thus it would inconsistent and could not be used for aggregation or comparison purposes.

Q100: Are there other funding sources used in the context of margin lending?

Q101: What are the obstacles to lenders reporting the market value of funding sources?

Q102: Would reporting pro-rata amounts address some of the challenges or facilitate reporting?

Please see our response to Q99.

Q103. Should the cash in the margin accounts be considered also as part of the collateral for a given margin lending transaction? Please elaborate.

All cash values in all currencies are netted down to a single amount owing between the counterparties. Where the net amount is negative then a margin loan has taken place. Where the amount is positive then that cash amount is available to collateralise other exposures (e.g. short positions). Therefore the answer is no, this cash should be considered as part of the collateral for the other obligations arising in a prime brokerage account, but not margin loans.

Q104: What are the metrics used (other than LTV ratios) to monitor leverage from margin lending, and more broadly to address risks related to the value of collateral? How are these calculated?

Portfolio margin methodologies are used to manage the risk and limit the leverage available to clients based on their collateral portfolios across all products including margin loans. Margin loans are not treated independently within this process.

The securities deposited as collateral will be subject to a "haircut" which defines the maximum Loan-to-Value (LTV) or collateral value assigned to these long securities. The securities loaned to a borrower/counterparty will bring with them a collateral requirement – i.e. an amount over and above the value of the loaned securities which the lender requires to be collateralized. These haircuts/collateral requirements are generated by proprietary margin methodologies and their output effectively defines the minimum level of their own capital/equity (assets minus liabilities) that a borrower must have in the account to support the market exposures in their portfolio. Effectively this ratio (market exposure ÷ margin requirement) defines the maximum amount of leverage permissible in the prime brokerage account.

These calculations are performed daily, and where appropriate action is taken to ensure that the account is within these constraints at the end of each day.

Q105: Using these metrics, what are the current limits or thresholds used by margin lenders that will trigger a collateral action? How are these limits determined? Are there different thresholds triggering different actions? Can they vary over time, and for what reasons?

If at any time the portfolio contains insufficient net collateral to secure the market exposures constituted by the portfolio then the borrower/counterparty must either reduce their market exposure (of which this could include a margin loan) or deliver additional collateral assets to bring the account back within the constraints.

Q106: What kind of collateral actions can be triggered by crossing these limits or thresholds? Please describe the actions, their impact on the metrics described in Question 13, and the potential associated changes in limits or thresholds.

Please see our response to Q105.

To the extent that the borrower/counterparty does not take such action then contractual remedies are available to the lender to ensure their exposure is managed – e.g. default rights, the ability for the lender to take these actions on the borrower's behalf.

Q107: Are there any other important features, market practices or risks that you would like to bring to our attention in the context of margin lending?

Paragraphs 248 – 250 provide a good summary of the characteristics of prime brokerage margin lending. The other key characteristics to note is that a prime brokerage account consists of a portfolio of assets (securities and/or cash) over which the prime broker/lender has a security interest and which secure an aggregate amount of liabilities (borrowed securities or cash). A counterparty's cash position will either be net positive or net negative and will then fall into the asset or liability bucket.

Q108: Do you have any alternative proposals for reporting information related to funding sources that might reduce the burden on reporting entities?

Please see our response to Q99.

Q109: Do you agree with the collateralisation and margin lending practices described above? Are there instances where margin loans are not provided (or haircuts applied) on a portfolio basis?

The LTV concept does not apply to margin loans directly as they are not looked at in silo against the collateral portfolio. The collateral portfolio covers all products within the risk methodology of which margin lending is just one.

As the ability for a client to borrow from a prime broker is explicitly linked to the value of their trading portfolio, they will only ever be provided on a portfolio basis.

Q110: What are the potential obstacles to reporting information regarding the individual securities set aside in margin accounts by the lender?

Individual securities are not set aside in margin accounts. The margin loan is a function of all of the assets held in the clients trading portfolio. However, when reporting the portfolio value, if done at ISIN level, this will lead to substantially high volumes being reported with no additional value being provided. Therefore reporting the portfolio by asset class would be a more suitable approach and consistent with the FSB proposal.

Q111. Would you agree that in the context of margin lending the entire collateral portfolio, i.e. both cash and securities, would require reporting? If no, please explain.

There is no cash collateral associated with margin lending. As stated in response to Q103, if there is a net positive cash balance then there is no margin lending taking place.

Q112: What are the obstacles to the reporting of reuse of collateral for transactions where there is no transfer of title? What are the current market practices aimed at mitigating risks from collateral re-use specifically in the context of margin lending?

A prime broker will have contractual right to reuse assets in the clients' portfolio as long as they are indebted to the prime broker. The level of reuse available is a function of a calculation defined in the PB agreement, for which margin loans are an integral part. The prime broker has the obligation to monitor this calculation and to record all use of assets under the contractual right. Reuse only occurs when this contractual right has been applied irrespective of the availability of reuse. At this point in time, when the reuse right is invoked, title transfer takes place to the prime broker. In this regard, reuse of collateral under margin lending arrangements involved title transfer, and these assets will be treated the same as any other title transfer assets and become part of the prime brokers fungible pool of assets in the depot.

4.3.5.6 Collateral Re-use

Q113. What options exist to link collateral that is re-used to a given SFT or counterparty? Please document the potential issues.

In parallel to this Discussion Paper, the Financial Stability Board (FSB) is currently consulting on possible measures of collateral re-use, which ESMA will take into account in its approach to SFTR reporting. DB is also responding to the FSB's consultation.
Any re-use calculation performed to provide data at the NCA should be done at the firm level (receiving the collateral) for each ISIN and not at counterparty level. It should also be calculated across all SFTs and not done for individual SFT's independently.

This is because of the fungible nature of the receipts and deliveries associated with the firm's depot of collateral there is no association of ISINs with trades or counterparties. In this instance, for certain components that are part of the re-use proposed calculations - e.g. 'own assets' – if the calculation is done separately for each type of SFT the 'own asset' figure will be the same for each calculation and thus will intrinsically overestimate the use of own assets for each SFT type, whereby the assumption would be made that the same own asset would be used potentially in the calculation for the different SFT types.

If the FSB proceeds with one of the proposed methodologies, more clarification will be needed in relation to the implementation of these calculations to ensure that there is a consistent approach taken by all firms and regulators, as there are potential areas for interpretation within the proposed elements of the calculations which may make resultant aggregations inaccurate.

It should also be noted that in order for these measures to be provided, they will need to be performed independently of any trade reporting that may be required by NCAs. The calculations will use different data sources and systems and also require information on non-SFT related elements. In this regard, consideration needs to be given to the implementation requirements and how long it may take firms to provide this data to the national regulators for use by the FSB once the data collection exercise has started at the global level.

Q114. In which cases can the re-use be defined at transaction level?

Please see our response to Q113 for the problems with such an approach.

Q115. Do you see other ways to calculate the collateral re-use for a given SFT?

Any calculation that is performed can only be done at entity (receiving counterparty) ISIN level. Any attempt to perform at another level (e.g., counterparty level) will skew the data and compromise its meaning due to double counting of information within the calculation.

Q116. Are there any circumstances in which the re-use percentage applied at entity level could not be calculated for a given security (e.g. per ISIN)?

The information would be needed at ISIN level to perform the calculation at entity level, thus, as per our answer to the previous question, all re-use calculations can be performed at entity ISIN level.

In relation to paragraph 263, the percentage amount calculated will be relevant per ISIN but not per SFT. If this percentage is attempted to be overlaid at the transaction level it will skew the data due to double counting of information within the calculation.

Q117. Which alternatives do you see to estimate the collateral re-use?

The suggested formula for the estimation of re-use is achievable at entity ISIN level but not at counterparty level, therefore, this data needs to be provided independently to the counterparty data.

Q118. When the information on collateral availability for re-use becomes available? On trade date (T) or at the latest by T+1?

The ability to re-use collateral is based on contractual terms and is not specified at the ISIN level. The contractual terms apply to all the collateral provided and not specific assets. Thus, the ability to re-use collateral is not relevant to the trade itself and trade date.

Q119. Is it possible to automatically derive the collateral re-use in some cases given the nature of the SFT (meaning based on the GMRA, GMSLA or other forms of legal agreements)? If yes, please describe these cases and how the information could be derived. Please explain if deviations could be drafted within legal agreements to deviate from the re-usability.

Given that the ability to re-use collateral is based on contractual terms, it makes more sense to provide this information with counterparty data rather that against specific ISINs. It is not also possible to automatically derive the collateral re-use for all types of SFTs, due to the fact that all legal agreements can contain bilaterally agreed negotiated terms and thus assuming that all are the same In this regard would not necessarily be accurate.

4.3.6 Settlement section

Q120. Do you agree with the rationale for collection of information on the settlement set out in this section?

Where a Central Securities Depository (CSD) acts as counterparty to a transaction by virtue of its lending activity, it will be intrinsically reported as such. EMIR does not cover settlement; it would be preferable for SFTR to follow a similar course. We note that CSDR will cover SFTs and do not believe there are any benefits from replicating the data here.

Q121. Do you consider that information on settlement supports the identification and monitoring of financial stability risks entailed by SFTs?

We do not think that additional settlement information relating to SFTs is required or provides any additional information on financial stability.

Q122. Do you agree with the approach to identify the settlement information in the SFT reports?

SFT systems do not include settlement information at this granular level. This information is not readily available in the system and adds limited benefit, thus we would not support the inclusion of these data elements. Please see our response to Q120.

Q123. Do you envisage any difficulties with identifying the place of settlement?

Yes. It is not a field currently found in SFT systems.

Q124. Are there any practical difficulties with identifying CSDs and indirect or direct participants as well as, if applicable, settlement internalisers in the SFT reports? Would this information be available by the reporting deadline? Please elaborate.

This information is not readily available. Settlement systems and reporting systems are not linked up because we do not currently have to provide information about settlement in our reporting. EMIR does not include settlement reporting. Settlements on SFTs will be reported under the CSDR regulation and requiring it under SFTR reporting would duplicate the reporting. For consistency purposes and to avoid duplication it would be best to wait for CSDR to capture the reporting of settlements.

4.3.8 Master agreements

Q125. Will this information be available by the reporting deadline? What are the costs of providing this information?

As contractual information is at the counterparty level there is no dependency on the trade reporting deadline. This information is usually stored independently of trading systems and thus would require infrastructure spend to be able to append this information to trade data as is proposed in the reporting table. It would therefore be more suitable to include this information in the counterparty reporting table.

Fields 11, 12 and 13 in the reporting transaction reporting table would not be readily available or easily implemented within the required timeframes.

We would question the need to repeat the information on a trade by trade or position by position basis as this is effectively static data. It could be uploaded on a one off basis and referred to if it was desired.

Q126. What other data elements are needed to achieve the required supervisory objectives? Please elaborate.

It is not clear whether providing any master agreement information will achieve the required supervisory objectives. All that this would do is confirm the type of agreement that the bilateral negotiations are based on.

Q127. Do you agree with the proposed categories of trading methods to be reported by SFT counterparties?

These trading methods do not apply to all SFTs and it may be challenging to append this information to each trade. As ESMA has indicated in the discussion paper these methods are from an ICMA survey and are relevant in the repo market.

Securities lending trades are primarily agreed via telephone or electronic messages (i.e. Bloomberg, email etc.). There are some matching platforms that will take files from borrowers and lender to match supply and demand but there is no trading automatically performed on these platforms, all trades are agreed bilaterally between the counterparties involved.

Margin lending actively is primarily based on telephone or electronic messaging communication.

Q128. Are there any other methods of trading that are not covered?

Please see our response to Q127.

5 Transparency and availability of data

5.1 Operational standards for data collection

Q129. Do you agree with the proposed types of validations? Would you include any further validations? If so which ones? Please elaborate.

We agree with the proposed types of valuation.

The Financial products Markup Language (FpML) is the predominant messaging standard for OTC derivatives, facilitating both the electronic confirmation and electronic reporting of transactions. Significant enhancements have been made to FpML to support both global and jurisdictional reporting regulations.

5.1.2 Reconciliation of data

5.1.2.1 Scope of the reconciliation process

Q130. Do you agree with the proposed scope of the reconciliation process? Should trades expired or terminated more than a month before the day on which reconciliation takes place be included in the reconciliation process? Please elaborate.

We agree with the scope of the evaluation process.

Expired and terminated trades older than one month should not be included. If reporting works correctly, such trades have been reconciled before and breaks have been clarified/fixed already.

Q131. What is the earliest time by which the reconciliation process can be completed? If not, please indicate what other characteristics need to be included? Please elaborate.

No comments.

5.1.2.2 Framework of the reconciliation process

Q132. Do you foresee issues with following the EMIR approach on reconciliation of data for SFT? What other approaches for reconciliation of transactions exist? How many data elements are reconciled under those approaches? What is the timeframe of reconciliation under those approaches? Please elaborate.

We support the intention to follow the EMIR approach.

5.1.2.3 Data elements to be compared during the reconciliation process

Q133. What are the expected benefits from full reconciliation? What are the potential costs from TR and counterparty perspective to adopt a full reconciliation approach? In terms of the matching of data, which of the data fields included in Section 6.1 can be fully reconciled and for which ones certain degrees of tolerance has to be applied? Please provide concrete examples. Please elaborate.

The benefits from full reconciliation might be offset with disadvantages. Only the essential fields of a trade should be reconciled. One lesson learnt from EMIR is the downside of matching many fields are low matching rates due to inconsistent interpretation / standards at

different TRs. Only data, which can be clearly agreed between counterparties, should be reconciled.

There are potentially a lot of data fields within the reporting data for which it will not be possible to fully reconcile due to availability issues and different interpretations across the market. Fields which are supplied from metadata should not require reconciliation.

As explained in response Q19, more time is required to allow us to complete a full review of the data requested, ability to provide, impacts to business, IT build, possibilities for reconciliations, etc.

Q134. Do you foresee any potential issues with establishing a separate reconciliation process for collateral data? What data elements have to be included in the collateral reconciliation process? Alternatively, should collateral data be reconciled for each collateralised SFT individually? What would be the costs of each alternative? Please elaborate.

We agree that the reconciliation of collateral data should be completed separately from the reconciliation of common loan data. Additional time is required to complete further analysis on collateral data elements that can be reconciled.

The sheer vastness of information that will be sent to TRs will undoubtedly results in some unreconciled items. Reporting entities would need to consider IT and Operational resource requirements that may be required (ongoing) to deal with anomalies in a timely fashion.

5.1.3 Common feedback to participants

Q135. What additional feedback information should be provided to the reporting counterparties? What should be the level of standardisations? What would be the benefits of potential standardisation of the feedback messages? Do you agree with the proposed timing for feedback messages?

We agree with the proposed set of feedback to participants and the timing proposed.

5.2 Public data

Q136. Would you be favourable of a more granular approach for public data than the one under EMIR? Would you be favourable of having public data as granular as suggested in the FSB November 2015 report? What are the potential costs and benefits of such granular information? Please elaborate.

We see limited benefit in an increased granularity of data provided by TRs to the FSB. This would potentially raise additional concerns on data protection.Due care should be given to avoid identifying individual firms by publishing information at a very granular level, as sophisticated market participants have the ability to fingerprint (identify) market participants by the transactions they undertake in certain circumstances. Highly granular data provides more risks of firms and clients being inadvertently identified.

Q137. In terms of criteria for aggregation, which of the following aspects ones are most important to be taken into account – venue of execution of the SFT, cleared or not, way to transfer of collateral? What other aspects have to be taken into account for the purposes of the public aggregations? Please elaborate.

No comments.

Q138. Do you foresee any issues with publishing aggregate data on a weekly basis? Please elaborate.

Monthly or quarterly may provide more meaningful data for trending analysis.

5.3 Data made available to authorities

Q139. At which point in time do you consider that the additional data elements regarding the reconciliation or rejection status of an SFT will be available? What are the potential costs of the inclusion of the above mentioned additional data elements? What other data elements could be generated by the TRs and provided to authorities? Please elaborate.

Q140. Do you consider that all the relevant data elements for generation of the above reports will be available on time? What are the potential costs of the generation of above mentioned transaction reports? What are the benefits of the above mentioned transaction reports? What other transaction reports would you suggest to be provided by the TRs? Please elaborate.

The additional data elements should be provided by TR and added to the report from the firm when available.

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

Q141. Do you consider that all the relevant data elements for calculation of the above reports will be available on time?

Q142. What are the potential costs of the generation of above mentioned position reports? other reports would you suggest to be provided by the TRs? Please elaborate.

No comments.

Q143. 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 only non-reconciled data? What are the potential costs of the separation of above mentioned position reports? What are the benefits of the separation above mentioned position reports? Please elaborate.

This question is addressed mainly to TRs, especially concerning its cost aspects. From our perspective reports of reconciled and on-reconciled data should be separated. There will be a data where authorities can be sure they are correct. The second data set would provide a good overview of risk and interconnectedness, but one should be aware of possible errors.

Q144: Do you foresee any technical issues with the implementation of XSD in accordance with ISO 20022? Do you foresee any potential issues related to the use of same cut-off time across TRs? Do you foresee any drawbacks from establishing standardised xml template in accordance with ISO 20022 methodology for the aggregation and comparison of data? Please elaborate.

No comments.

5.4 Operational standards to aggregate and compare data across repositories

5.4.2 Avoidance of double counting

Q145. Further to the aforementioned aspects, are there any other measures that have to be taken to avoid double counting? Please elaborate.

No comments.