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European Securities and Markets Authority
103 rue de Grenelle
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FRANCE

(submitted via ESMA online portal)

Re: SFTR DISCUSSION PAPER/REPORT – Draft RTS and ITS under SFTR

Introduction

The Bank of New York Mellon Corporation (BNY Mellon) is a global investments company dedicated to helping its clients manage and service their financial assets throughout the investment lifecycle. As one of the world's largest investment services and investment management firms, BNY Mellon welcomes the opportunity to respond to the STFR Discussion Paper/Report (ESMA/2016/356) regarding the draft RTS and ITS under SFTR.

BNY Mellon operates in Europe through: (i) branches of The Bank of New York Mellon (a New York state chartered bank) and (ii) directly established and duly authorised subsidiaries established in certain EU jurisdictions and branches of those entities operating in core EU member states. BNY Mellon provides services to clients and end-users of financial services globally. It is accordingly keenly interested to ensure financial markets operate fairly and consistently globally and that common standards ensure playing fields are kept level.

General Comments

BNY Mellon is responding to questions that affect our securities lending and triparty businesses in particular. Our responses to the detailed questions address areas of special concern or interest. Our response is necessarily brief, due to the short consultation period and the technical complexity of the subject. We would welcome the opportunity to supplement our responses if required, and we may wish to submit further views in due course.

In terms of key messages, we would highlight the following points:

- Collateral information is not known specifically to each loan and counterparty until allocation is made on actual settlement date plus one (S+1); and
- The linking of transactions will be burdensome, especially as UTI is a new standard for which there are still major uncertainties as to application.

BNY Mellon has worked closely with the International Securities Lending Association (ISLA) in developing their response to this Discussion Paper. BNY Mellon supports the ISLA response to this Discussion Paper.

Responses to Specific Questions

Our responses to the specific questions raised by ESMA are contained in Annex 1 below.

BNY Mellon looks forward to further engagement with ESMA in regard to this Discussion Paper and any future consultation papers on this topic.

Veronica Iommi
EMEA Head of Public Policy
Office of Public Policy and Regulatory Affairs
Legal Department
BNY Mellon

Annex 1 – Responses to Specific Questions

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.

Collateral information will only be available for each SFT on actual settlement date +1. BNY Mellon supports the response of ISLA.

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

On actual settlement date +1. BNY Mellon supports the response of ISLA.

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?

The proposal appears complex and burdensome. UTIs will be the long term solution but are not currently widely implemented, so implementation will be complex and costly. It will require a long lead-in period.

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

The key issue that market participants face is the timing of the market data being used to update the market value for reporting. Current day closing vs. previous days close, timing of the FX rate and bid – offer and mid price reporting.

The assumption is that both borrower and lender will report market values based on prices used within the existing exposure calculation process, and subsequently used for the collection of collateral. A second assumption is that a value tolerance will be allowable due to the different pricing sources used by the parties.

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.

BNY Mellon supports the response of ISLA.

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

BNY Mellon supports the response of ISLA.

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?

BNY Mellon supports the response of ISLA.

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

BNY Mellon supports the response of ISLA.

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

BNY Mellon supports the response of ISLA.

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.

BNY Mellon supports the response of ISLA.

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.

Same answer as for Q87.

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

BNY Mellon supports the response of ISLA.

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.

BNY Mellon supports the response of ISLA.

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

BNY Mellon supports Option 2. BNY Mellon supports the response of ISLA.

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?

BNY Mellon supports the response of ISLA.

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?

BNY Mellon supports the response of ISLA.

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.

BNY Mellon supports the response of ISLA.

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-rate allocation for internal purposes? What is the current market practice for linking a set of collateralised trades with a collateral portfolio? Please elaborate.

BNY Mellon supports the response of ISLA.

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

From an agent lender perspective, collateral is typically held by the agent lender in an omnibus securities account for the benefit of the relevant lending clients. As collateral is held on a pooled basis and the client contractually agrees the agent lender will merely hold the collateral on the client's behalf, collateral is not re-used.

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.

Under the BNY Mellon agency lending programme, loans are entered into and form part of the governing master agreement and the ability to re-use or re-hypothecate collateral is determined by those terms. The terms relevant to such re-use or re-hypothecation are not typically amended as this may affect the ability to rely on existing legal opinions as to the enforceability of the agreement, particularly on default.

However, as clients agree that BNY Mellon shall hold securities collateral on their behalf and such collateral is held by BNY Mellon on an omnibus basis for the benefit of all relevant clients, then re-use/re-hypothecation by such clients is not permitted.

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

BNY Mellon supports the response of ISLA.