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**Consultative Paper – Draft RTS and ITS under SFTR**

Wednesday, 30 November 2016

Dear Sir/ Madam,

Deutsche Bank welcomes the opportunity to provide comments on the draft RTS and ITS under SFTR. The majority of ESMA's proposals are well balanced but there are a few areas where the draft might be improved by targeted amendments. [DB is responding to this consultation from three different perspectives, as a prime broker, as a principal in securities financing transactions (SFTs) and as an agent and principal through its Agency Securities Lending (ASL) business.]

- ESMA recently published a corrigendum stating that the timeline for reporting the details of the collateral component of an SFT would be value date and not value date +1. This would not be possible in practice as the final details of the collateral component would not be available for certain transactions until late on the value date at the earliest. It would not be possible for trades against agent lenders, in particular in triparty agent scenarios and when SFT trades are against collateral baskets, as information is not available under current processes;

- We support ESMA's revised proposal for collateral reuse to be calculated at legal entity (collateral receiver). To ensure consistent application of the calculation across the industry, ESMA should clearly define each component and ensure that the definitions are consistent with those used in the Financial Stability Board (FSB) reuse calculations;

- Whilst ESMA has recognised the challenges associated with the reconciliation of different data elements, the proposed list of fields to be matched remains too extensive and will create large reconciliation issues. Many of the proposed fields are not necessary and could be obtained from trade repositories, whilst it will be impossible to match others fields, such as the market value of the collateral. A reduction of the matching fields would be beneficial for data quality purposes and a reduction of operational costs;

- It would be helpful to clarify the reporting obligations for transactions between two different types of counterparty subject to different reporting application dates (e.g a UCITS client with an investment firm) as these situations cause uncertainties for reporting Agent Lender transactions.

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

Yours sincerely,

Matt Holmes
Head of Regulatory Policy

## 3 – Registration requirements under SFTR and under EMIR

***Q1: Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.***
***Q2: Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.***
***Q3: Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.***

N/A.

## 4- Reporting logic

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

Yes, the definitions in EMIR are granular enough to classify counterparties to SFTs, and we support using them.

However, ESMA should provide guidance, as they did for the European Markets Infrastructure Regulation (EMIR), outlining that non-financial counterparties (NFCs) are responsible for notifying to financial counterparties whether they are defined as a small NFC under the EU Accounts Directive. The guidance should clarify that if the NFC does not provide their classification status to the financial counterparty, the financial counterparty can assume that they are not considered a small NFC. The financial counterparty would therefore not be responsible for reporting on their behalf, unless the NFC confirms its status.

In addition, it is not clear how to treat transactions between two different types of counterparties (see Article 3) subject to different reporting application dates as outlined in Article 33 paragraph 2 sub-paragraph 2 (i) to (iv). For example, this conflict arises where Agent Lender transacts on behalf of a UCITS client (its reporting compliance date is 18 months after date of entry into force of the RTS) with a counterparty that is an investment firm (its reporting compliance date is 12 months after the date of entry into force of the RTS). It would be useful for ESMA to clarify the reporting expectations between the counterparties' reporting compliance date.

It is not clear how to report Agent Lender transactions where the counterparty/principal to the SFT (the Agent Lender client) is a non-EU counterparty but the other counterparty (e.g. the borrower) is located in the EU.  Non-EU clients would not have any reporting obligation but the EU counterpart/borrower would (i.e. reporting would be one-sided). In this scenario:
- The Agent lender (on behalf of its non-EU client) should not be expected to report a trade on behalf of its non-EU client for "matching" purposes only, since the non-EU counterparty is not subject to a reporting obligation.
- The report sent by the counterparty (the borrower) should indicate that it is one-sided, i.e. the Trade Repository is then not expected to find a match report. It would be helpful if ESMA could clarify the expectations on counterparties in such a scenario.
- It is not clear whether the counterparty would require the Agent Lender to provide the Legal Entity Identifier (LEI) of the non-EU counterparty.  In this instance, the Agent lender would need to send the collateral breakdown for the Agent Lender's client, even though the Agent Lender client itself does not have the reporting obligation. It would be costly and difficult to achieve in practice.

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

We do not foresee any issues in identifying counterparties of an SFT trade following the definitions set out in the consultation paper. However the definitions imply that agents are only involved within securities lending transactions, which is not correct as they are involved in repo transactions (see recital 95). Triparty agents (recital 96) can also act as a lending agent for their own programmes.

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

Generally we do not think that the definitions provide room for interpretation now that ESMA have provided a separate prime broker definition. However brokers do not exist in the context of securities lending transactions. If this field remains for securities lending transactions it would be left blank.

Please refer to our answer to Q5 regarding agents.

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

***Q7:*** ***Based on your experience, do you consider that the conditions detailed in paragraph 105 hold for CCP-cleared SFTs? Please elaborate.***

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

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

We do not currently have enough information about future CCP models and offers for SFT clearing to be able to comment at this time.

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

Please refer to our comments in the separate excel file (sftr_tables_cp_version).

Whilst we recognise the value of adopting the EMIR approach to the SFTR reporting there is currently no concept of "execution timestamp", we do not believe that it is relevant or feasible for SFTs.

ESMA stated that the timeline for reporting the details of the collateral component of an SFT would be value date and not value date +1. This would not be possible in practice as the final details of the collateral component would not be available for certain transactions until late on value date.

## 4.2.2.2 Reporting of SFT

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

DB would generally agree with the proposed action and report types. However, as expressed in our response to ESMA's discussion paper, the action types could be amended in the context of SFTs.

ESMA should clarify the rationale for proposing two different modification types. This is not consistent with existing EMIR reporting which includes just one action type relating to modifications.

Table 1 on page 41 includes the action type "cancellation" which is not included in table 2 on page 43. Table 2 includes "error". It is our understanding that these fields are the same but ESMA should clarify what the correct action type would be. Additional complexity is added to the reporting by having a higher number of actions types (separate reporting schemas for repos, securities lending and buy-sell-backs). The underlying system needs to know how amendments to each field have to be classified, thus drastically increasing the development burden. The use of more action types also increases the risk of high volumes of unmatched transactions. On this basis a single modification type would be preferable and to be aligned with EMIR.

We understand that collateral data would be reported separately from loan and counterparty data, to allow for net reporting of collateral at LEI level. It would mean that when collateral data is reported in table 2(loan and collateral data), the loan data field would be left blank. And vice-a-versa. If this assumption is incorrect then we would disagree with the loan and collateral data being combined in one table, because it would effectively be attempting to link specific SFTs with specific collateral, which ESMA has acknowledged is not possible when collateralisation takes place on a net exposure basis.

For Agent lenders, particularly in triparty agent scenarios and when SFT trades are against collateral baskets, the agent lender will not receive the collateral breakdown from the triparty agent until late on value date (i.e. 10 pm or later). Afterwards, the agent lender must allocate the collateral to the underlying beneficial owners. Only then the agent lender can send the collateral breakdown to the counterparty for reporting. Sometimes there are issues with the automated allocation process which requires operational oversight to address before reporting. This will only happen during business hours on value date + 1. Without fundamental changes of business practices it is impossible to report the collateral on value date as required by ESMA.

A higher number of actions types adds to the complexity (separate reporting schemas for repos, securities lending and buy-sell-backs). The underlying system needs to know how amendments to each field have to be classified, thus drastically increasing the development burden. The use of more action types also increases the risk of high volumes of unmatched transactions. On this basis a single modification type would be preferable and would be aligned with EMIR.

We would also like ESMA to clarify the point below:

*Point 122*
*Reporting of re-use of collateral pertaining to SFTs: "The reporting of reuse of collateral pertaining to SFTs re-use report would provide information on collateral re-use by the reporting counterparty as the collateral taker. Collateral re-use would be reported independently of the underlying trades*

*and the counterparty from which the reporting counterparty has received the collateral, however the authorities would be able to link the reuse information with the relevant SFT through the use of the relevant ISINs.*

ESMA have acknowledged in paragraph 295 that "re-used securities cannot be linked to SFTs". It is not possible to distinguish the relevant SFT simply based on the International Securities Identification Numbers (ISIN), since a counterparty may re-use a particular security that has been received via multiple transactions/Unique Transaction Identifiers (UTIs)

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

ESMA should clarify the rationale for proposing two different modification types. This is not consistent with existing EMIR reporting which includes just one action type relating to modifications. Our expectation is that any modifications to business terms that occur to the same SFT within the same business day would be reported in one report.

If the two separate modification action types remain, we would expect that modifications to the fields in table 2 "loan and collateral data" (e.g., floating rate, haircut, etc.) could be reported as a "modification of business terms".

We understand that a change in the value of a loan and a change in the value of collateral would be reported under different modification types. In our view, a change in the value of the loan is a change in the value of collateral and they should therefore be reported under the same modification type. If all changes to any of the loan and collateral data fields must be reported as modifications, a significant volume of data would be reported on a daily basis.

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

Please refer to our comments in the separate excel file.

If the two separate modification types remain ESMA should provide a complete list of all data elements that should be reported under "other modification".

### 4.2.3 Direction of the trade

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

Even though we assume that the ESMA proposal is in line with article 2 paragraph 1b of the Financial Collateral Directive, according to which the securities in a repo are the collateral for a cash credit, these terms are not used in practice.

According to the repo standard agreements (e.g. GMRA) the securities provider is defined as the seller of securities and the counterparty receiving the securities is defined as buyer. To avoid any misunderstandings we strongly recommend to use the widely accepted terms in the existing standard agreements. The same applies to securities lending and borrowing standard agreements (e.g. GMSLA), according to which the securities providing party is the lender whereas the securities loan receiving party is the borrower.

Whilst the proposal is not consistent with existing market terminology, it is however clearer than the proposal outlined in the discussion paper.

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

Please see our comments for question 14. As the terms collateral taker and collateral giver are not existing market terminology they could lead to confusion.

### 4.24 Trade scenarios

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

Bilateral repo scenarios do not include an Agent Lender, nor do they include multi-allocated trades in which more than one Agent Lender client (counterparty) lends securities to a single borrower (counterparty)

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

Yes, they accurately capture the conclusion of these trades.

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

Scenarios 1 and 2 are correct. However the most common repo scenario, a bilateral repo between 2 counterparties without the intermediation of a broker/agent, is not included in the consultation paper. We do not have enough information to comment on CCP scenarios (3 & 4) at this time.

Regarding the second scenario, it should be noted that a Special Purpose Vehicle (SPV) entering into repos will not be able to determine the market value of the securities used in a repo, and would rely on the counterparty for its valuation in a similar manner to EMIR.

We would like to clarify paragraph 156 and 158
*156. "In case the identity of the actual counterparty is not disclosed by the lending agent by the reporting deadline or by the value date, whichever happens first, it should be the lending agent that is considered as the counterparty to the SFT. This is to ensure that an SFT has always two counterparties. "*

*158. "In the third case, that is illustrated below, there are two beneficial owners of the securities (Counterparties 1 and 2 in the scheme below but there could be multiple (more than 2) beneficial owners or only one beneficial owner) that lend securities against collateral through an agent lender that acts as a principal to a third market participant (counterparty 4), The 3 counterparties and the agent lender report their trade to a TR (3 trades, 6 reports)."*

156: The Agent Lender would know the LEI of the counterparty and this could be reported as such on T+1, although the Agent lender would not know the collateral until S+1 (e.g. in the case of tri-party transactions with collateral baskets). It is therefore not logical for the Agent Lender's client (or the Agent Lender on the client's behalf) to report the Agent Lender as counterparty to the trade. This will result in reporting inconsistencies and reconciliation breaks. If the reporting is

used to reflect concentration risk, then trades which are shown against Agent Lenders in the intervening period between T+1 and S+1 will skew these statistics.

158: The wording is ambiguous. Lending "through" an Agent Lender suggests that this is a trade performed in an agent role, whereby the Agent Lender would distribute securities to a third market participant on behalf of its client. Or does the description assume that the Agent Lender acts as principal in the transaction? If the Agent Lender is acting as principal to all sides, it effectively becomes a Principal Broker Dealer.

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

Scenario 1 is not the most used structure in the market. Scenario 2 is most commonly used with the exemption of the "broker/agent" which does not exist in this scenario and should be removed.

A broker is not relevant in the context of securities lending transactions, however ESMA is proposing that the LEI of the broker be provided for securities lending transactions. It this field remains for securities lending transactions it would be left blank.

Regarding scenario 3, it is incorrect to refer to counterparty 3 (the principal intermediary) as a lending agent. They are acting as a principal to the transaction and not an agent. Additionally, counterparties 1 and 2 should not report transactions with counterparty 4 as the transactions between them are not legally linked. Counterparty 3 should report the transactions.

We do not currently have enough information about future CCP models to be able to comment on scenario 4.

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

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

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

No, on the understanding that "actors" refer to counterparties to an SFT.

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

One of the main issues is that the market value of securities will change every day and collateral value will require an "other modification" to be submitted every day. This effectively imposes daily position reporting, in addition to transaction reporting. As highlighted in our response to the discussion paper, "close of business position reporting" is far more useful than transaction-by-transaction reporting, and any trade correction or modification should be captured in the daily new position report.

Different market participants may use different pricing sources and may therefore report different market values every day for the same UTI. In this case it would not be possible to establish market value as a matching field and reconciliation may not be possible

The amount of data which needs to be reported every day would be significant. This would be a vast undertaking for the industry, Trades Repositories and regulators to aggregate data to forward to the FSB.

Given the volume of data that ESMA would receive and likeliness that it would not be reconcilable across counterparties, it would be more appropriate to source market prices from data sources themselves. However, if ESMA maintain that this data should be provided by counterparties to an SFT then the market price field in the reporting tables should not be a matching field or at least have a sufficient tolerance to prevent a large volume of reconciliation breaks.

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

Yes. Though it is not common market practice for uncollateralised securities lending transactions to occur they can occur, and so it is important to be able to separate them from collateralised transactions where the collateral information has not been reported by mistake.

Regarding the proposal for uncollateralised trades which become collateralised at a later date to be reported as a collateral update to the original trade, ESMA should note that these trades would typically be booked as new collateralised trades and we would therefore not expect to report them in the way that ESMA expects.

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

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

There would not be any obstacles to daily position level reporting for margin loans as they are already reported to clients on a position level end of day basis. Prime brokers do not provide information to their clients regarding intraday margin loans.

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

Guarantees and indemnifications generally do not exist in relation to prime brokerage margin lending. There could be a small number of cases where there is a guarantee from a parent to a subsidiary to facilitate trading. However, it is generally the creditworthiness of each counterparty which determines whether margin lending will occur.

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

The definition may unintentionally capture forms of acquisition finance and retail securities credit.

Acquisition finance often concerns a transaction in which a bank extends credit in connection with the purchase of securities. The securities are typically the shares in the target company's equity

capital. Such shares in principle qualify as securities, even if they are not publicly traded. The purchaser of the target company could be any type of company. An acquisition finance transaction is usually executed by means of a credit facility agreement and settled by the lending bank or, in case of a syndicate, the facility agent, transferring the borrowed money to the vendor upon utilisation of the relevant credit facility by the borrower-purchaser

Securities credit for retail clients concerns a transaction in which credit is extended in connection with the purchase of securities..A retail securities credit is usually executed in the form of a credit agreement and settled by payment to borrower provided the borrower provides sufficient collateral in the form of securities. The credit enables to retail investor to leverage the investment portfolio.

We believe it was not the Level 1 intention to capture this type of transactions, which do not fall within the remit of shadow banking; ESMA should clarify this interpretation.

### 4.2.4.5.2 Transaction data

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

ESMA should clarify why the amount of margin financing available and outstanding margin balance is necessary. The concept of free credit balances is aligned to the US broker/dealer market practices and is not applicable to the European one.

The definition of free credit balances set out in the discussion paper is incorrect and is referring to what are known as free cash balances. Free cash is a net positive cash balance that the counterparty has in their PB account. This would not exist in the context of margin lending as there would never be a net positive cash balance.

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

We could report positive or negative cash balances. However, if a positive cash balance was reported, a margin loan would not exist. As ESMA have stated in the consultation paper, a positive cash balance reflects the clients own money.

Although the margin loan will be reported in the base currency, the cash account could comprise other currencies with potential negative and positive balances. It is also important to note that these cash balances do not separately constitute margin loans and do not individually contribute to leverage in the system, and therefore are not necessary to report for the purposes of SFTR (and do not require separate UTIs).

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

It is our understanding that no other types of margin loans meet the definition.

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

Yes. Short market value is reported to clients at the end of day at security position level.

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

It is our understanding that no other types of margin loans meet the definition of margin lending. Short market value is applicable to Prime Brokerage margin lending as it 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.

### 4.3 Content and structure of the SFT report

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

We agree with the proposed structure. This is based on the assumption that for SFTs which are collateralised on a net exposure basis, we would not be required to populate the loan data fields within table 2 when reporting collateral data and vice-a-versa. If this assumption is incorrect then we would disagree with the loan and collateral data being combined in one table, because it would effectively be attempting to link specific SFTs with specific collateral. ESMA have recognised that in many cases this cannot be done.  We would welcome further guidance and examples of how the reports should be populated.

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

We agree with collateral re-use data being reported separately to the counterparty data. The rationale for this is that the data to be included in both reports would be held in different systems and re-use data is to be reported at the LEI (collateral taker), ISIN level and not linked to the counterparty from whom collateral is being received. As such, there is no need for the information to be provided within the same report.

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

Please see our comments in the separate excel file. We generally agree with the distribution of data elements across the tables.

It is our understanding that the margin table would only be completed for CCP cleared SFTs.  We do not currently have enough information about CCP models to be able to comment on CCP cleared trades but agree with margin data being reported separately to counterparty data given the different systems that the two sets of data would likely need to be sourced from.

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

Please refer to our comments in the separate excel file.

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

Generally, yes.

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

Please see our comments in the separate excel file.

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

Whilst we agree with the use of ISO country codes, we would like to reiterate that there are challenges around identifying the location of branches of a counterparty. ESMA has acknowledged this and stated that identifying the location of a branch of a counterparty is crucial. However, this information would not necessarily be known to the reporting counterparty.

Many legal agreements are signed as multi-branch agreements that do not specify specific branches. Thus when firms are operating a global trading book it may not be apparent what branch location the counterparty is booking in.

ESMA should also consider accepting LEIs when the LEI Regulatory Oversight Committee (ROC) guidance becomes available.

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

In the context of margin lending, the beneficiary would be the counterparty to whom we margin which is also the counterparty to whom we have recourse (i.e the counterparty that we would go to and demand repayment of the loan) ESMA referenced the EMIR reporting RTS on definition of a beneficiary in the discussion paper; the final SFTR reporting RTS should also include the relevant definition of a beneficiary to avoid any misinterpretation across industry participants.

DB understands that if the counterparty to an SFT is, for example, a sub-fund that does not have its own legal identity and therefore cannot obtain an LEI then we would report a client code for the sub-fund in the beneficiary field of the counterparty data table. We would then report the LEI of the umbrella fund in the other counterparty field. If, however, the sub-fund had its own legal entity and therefore could obtain an LEI then it is our understanding that we would report the LEI of the sub-fund in the other counterparty field and they beneficiary field would be left blank. ESMA should clarify that this the right interpretation for reporting beneficiaries.

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

It is expected that the reporting burden would only be limited for the CCP; other counterparties would still need to create and store a unique common reference in addition to the UTI. However, we do not have enough information about future CCP models to be able to provide a definitive answer at this time.

***Q42: Could you please provide information on incremental costs of implementing the proposal, taking into account that systems will have to be changed to implement the SFTR reporting regime in general?***

The amount of additional information that needs to be stored in the systems for SFTR reporting will create additional costs to the industry. Each additional field will add complexity, any field which is not necessary should therefore not be included.

The suggestion in paragraph 232 of an alternative to the report tracking number, by reporting the previous trade UTI through the chain, would still represent an additional burden to the counterparties as they would have to store this reference within their systems. It is also difficult to define this reference and to pass onto other counterparties. An additional dummy trade would probably need to be booked within the systems to reflect the underlying counterparty in the CCP trade. A significant amount of co-ordination with other counterparties will be required to derive the data fields. Many reporting counterparties will not have all the required information.

The reporting will require fundamental processing changes to the counterparty systems. More details will be included in our response to Europe Economics survey, but for example, not including additional vendor-related costs, we currently estimate that an Agent Lender will need to spend over €1.5mm on IT development.

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

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

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

We generally agree with the rules for determining the entity responsible for the generation and transmission of the UTI.

However, scenario 7 should be re-considered in light of the comments/logic in response to Q15 in respect of the consistent treatment of a securities loan and a repo and the re-consideration of the use of "seller" and "buyer" instead of "collateral giver" and "collateral taker". Market participants will then need to determine how and when the UTI that is generated is communicated to the counterparty.

In the context of prime brokerage lending there should be UTI throughout the life of the prime brokerage relationship. If the net cash balance changes between positive and negative each day then we would propose that the same UTI be used each time that the margin loan is reported to reflect the nature of margin loans.

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

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

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

A collateral basket can be used against a group, not just a given SFT. Collateral pools, portfolios and baskets can also include cash and not just securities.

In the context of prime brokerage margin lending, all transactions would be reported against a collateral portfolio. The portfolio could be used to collateralise other types of SFTs and derivatives.

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

As explained in our response to ESMA's first discussion paper, ultimately the majority of collateralisation is performed on a counterparty net exposure basis, and not at trade level.

Cash rebate securities lending transactions are the only securities lending transactions for which collateral can be reported at trade level. Collateral for all other securities lending transactions would be reported on the basis of net exposure.

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

No comment.

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

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

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

Paragraph 252 accurately describes the cases for which collateral would be reported on the basis on net exposures. However in the context of securities lending we do not currently have enough information about future CCP models to be able to comment at this time.

ESMA have acknowledged that when collateralization takes place on the basis of net exposures it is not possible to link specific collateral to a specific SFT. Paragraph 253 appears to contradict this. We understand that when reporting collateralization that takes place based on net exposures fields, the collateral fields (64 onwards) would be reported along with the master agreement fields (9-11), and the remaining loan data fields would not be re-reported (as they would already have been reported in the initial trade report). If the remaining loan data fields were re-reported when reporting the collateral data, it would essentially be attempting to link a specific SFT to specific collateral which, as stated, ESMA have acknowledged cannot be done. ESMA should clarify that this is how the provisions should be interpreted.

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

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

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

The portfolio of collateral can be reported at end of day.

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

For Agent Services Lenders, if insufficient securities are available to collateralise a triparty or Delivery-by-Value (DBV), then cash is used. This would be included in the daily reporting of collateral composition on settlement date + 1 (SD+1). Any requirement to use cash would not be known until settlement date (S) at the earliest.

With regards to paragraph 260:
*"In response to the question concerning the scope of fields to be reported for securities as collateral, all respondents highlighted that the requested information is too extensive. Respondents also stated that trade repositories and authorities should derive the values for the fields for reporting of attributes for the security from the ISIN. Furthermore, some respondents commented that providing asset categories and collateral market values should suffice. In response, ESMA would highlight that Article 4 (9)(b) of the SFT Regulation requires the reporting of the assets, their type, quality and value, which covers the reporting fields that ESMA has proposed for collateral.*

For participants, trade repositories, Central Securities Depositories (CSDs) etc to gather this level of detail (e.g Issuer LEI for collateral, collateral quality) would be a considerable and costly exercise. We would recommend to use information on ISIN level at most, to avoid creating additional difficulties to meet already challenging reporting timeframes.

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

As stated in our response to the discussion paper, SFTs are mainly collateralised on a net exposure basis per counterparty and not at trade level. ESMA's proposal for collateral reporting based on net exposures is therefore feasible.

The proposal requires both trade and collateral reports to include master agreement information for linking purposes. Master agreement information is stored outside of trading systems and in legal systems which may be subject to confidentiality restrictions. Providing the information in both reports would therefore be challenging.

As stated previously, meeting the timeline for reporting the details of the collateral component of an SFT is value date and not value date + 1 would not be possible as the final details of the collateral component would not be available for certain transactions until late in the day on value date – eg. 10pm or later. For example, we do not receive the final report of collateral from US triparty providers until late in the day. Once the collateral report has been processed into our

system, the collateral needs to be allocated to the underlying funds which is an additional process. If there are any issues with the collateral allocation process, operational staff will not be able to address these issues until the next morning.

In addition, it will not be possible for trades against an agent lender; under the current agent lender disclosure process the information on collateral would not be available on value date.

It should also be noted that collateralisation takes place based on actual settlement rather than intended settlement. Linking trade and collateral reporting based on ISD may create the impression of over or under collateralisation due to failing settlements being captured in the trade reporting

**Q55:   In which case would counterparties need to provide a bilaterally agreed unique code to for linking trades to collateral? If yes, please explain.**

As ESMA has acknowledged, it is not possible to link a specific SFT to collateral.  For cash rebate securities lending transactions though, collateral could be reported and linked at trade level.

PB agreements are generally bespoke per prime broker and we therefore understand why the list of master agreement codes provided in the ITS does not include them.

However, they generally include the same terms so, to avoid all margin loans being reported with a bilaterally agreed unique code, ESMA should a code for PB agreements to the ITS. Our proposal would be for the code to be "PBA" as most Prime Brokers refer to PB agreements in this way.

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

PB agreements are the only kind of bespoke agreement which would exist between 2 counterparties in the context of SFTs. We do not expect there to be any cases where more than 1 bespoke PB agreement exists between the same 2 counterparties.

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

Please see our response to Q56.

In addition, in this case a pair of counterparties would not have more than one Prime Brokerage agreement and would not transact securities lending under more than one GMSLA. They could have a principal GMSLA and an agency GMSLA but our counterparty would not sign the agency agreement directly so the pair of counterparties would not technically have more than one securities lending agreement.

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

Reporting individual securities would significantly increase the volume of data that would be reported, and result in important costs given the ongoing effort required to maintain the reporting infrastructure.

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

The reporting of outstanding balances by asset class would not facilitate reporting. It is not current business practice to report in this way so securities would have to be grouped by asset class (potentially through system changes) before being reporting to the TRs.

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

Collecting data on funding sources would provide little value. Funding sources are allocated across the firm so cannot be attributed to a specific product, portfolio or counterparty. Attempting to attribute funding sources to a specific product, portfolio or counterparty would therefore be arbitrary. Furthermore all prime brokers use different proprietary measures to provide this data so it would not provide for meaningful comparisons.

Nevertheless, if ESMA wanted to collect this data, it would be more suitable to do it through a periodic market-wide survey, as suggested for the collection of data on the methods used to execute individual SFT (paragraph 331)

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

Please refer to our response to Q60.

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

Please refer to our response to Q60.

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

A prime broker typically calculates portfolio leverage ratios by dividing clients' gross market exposure by the amount of the clients' capital that is held with the prime broker, except for non-linear derivatives and certain arbitrage strategies where methodologies differ. It should also be noted that different prime brokers do use different methodologies. The data collected would therefore not provide for meaningful comparisons.

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

We support ESMA's revised proposal for collateral reuse to be calculated at legal entity (collateral receiver) ISIN level but have the following comments:

- ESMA should clearly define each component of the calculation and ensure that the definitions are consistent with those used in the FSB reuse calculations to ensure consistent application of the calculation across the industry. For example, the calculation could benefit from additional clarification on the identification of collateral. Specifically, the

concept and definition of 'eligible for re-use' could lead to confusion, as the only assets that the calculation will be able to be performed on are those which have been title transferred into the firm's depot (which means that ownership of the collateral has been transferred to the receiving counterparty).

- Paragraph 305 states that the scope of collateral reuse being measured is restricted to collateral posted or received and subsequently re-used in SFTs. However, own assets generally means buys and not collateral so the statement does not match the scope of what will actually be considered in the re-use calculation. As previously indicated the identification of own assets can be challenging in some instances and therefore the calculation would predominantly be performed in the division in which re-use occurs.

- The difference between the fields "value of re-use collateral" and "estimated re-use of collateral" is unclear. It is our expectation that "estimated re-use of collateral" would be populated with the result of the re-use calculation but we would welcome clarity.

- Today collateral is allocated at LEI level of the beneficial owner (lender) and collateral provider, not at single SFT level. With major system enhancements the collateral could be allocated on single SFT level by using the trade reference of the SFT. The collateral breakdown provided by the triparty agent for re-use SFTs, will be subject to the same time constraints as that of regular SFTs, i.e. the triparty breakdown will not be received until late on value date and allocation within the agent lender's system for reporting would not happen until late on value date at the earliest.

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

Re-use would have to be reported separately as it cannot be calculated at counterparty level as ESMA have acknowledged. It can only be calculated at legal entity (collateral receiver) ISIN level.

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

Reporting re-use on a weekly or monthly basis rather than daily would reduce the costs. Given the large number of ISINs that the calculation would need to be completed for, the calculations could take a long time to complete and it would be challenging to report the information on a daily basis.  It would also take significant efforts to review and amend the data within a tight timeframe to report the data on a daily basis. Our preference would therefore be to be report collateral re-use each month. ESMA would not receive significant volumes of data on a daily basis and would have sufficient information to monitor collateral re-use.

### Q67: Are there cash re-investment programmes for agent lenders acting as principal?

Yes. Agent Lenders (for their agency business) may re-invest cash received as collateral on behalf of clients (in reverse repos) and may also perform time deposits or other investments as catered for by the client's specific reinvestment guidelines. In the case the Agent Lender acts as principal in SFT transactions, the cash received as collateral is usually re-invested in a reverse repo.

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

Agent Lenders typically measure using the Weighted Average Maturity (WAM) method for comparing the loan portfolio versus the client's re-investment portfolio. It is important to note that this is not done at transaction level but usually at a client [mandate] level and in accordance with a client's pre-defined guidelines.

If ESMA tried to collect data at transaction level, this would not be practical. It may be a more cost efficient method to collect aggregated information from participants using a periodic market-wide survey.

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

Please see our response to Q68.

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

We agree with "availability for re-use" being reported as 'yes' or 'no'. However, just because collateral is reported as being available to re-use it does not mean that it is necessarily being re-used.

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

Reporting additional settlement information relating to SFTs should not be required under SFTR. If ESMA requires this information for SFTs then it should be required under CSDR as reporting data on settlement goes beyond the level 1 SFTR text. Some of the information that ESMA is requesting, for example, regarding SFTs that settle outside a CSD is already required under CSDR so reporting it under SFTR would be duplicative.

If ESMA maintain that the CSD participant or indirect participant field should be reported under SFTR then the first entity in the custody chain could be reported as an indirect participant. It would not be possible to report the CSD participant.  However, reporting the indirect participant would require significant infrastructure development and spend. Information on the first entity in the custody chain is not stored in front office booking systems so multiple systems would have to be reconciled and reports enriched.

Given the infrastructural challenges in reporting this data and duplication with CSDR, this information should not be required under SFTR

We would like to seek clarification on paragraph 324.
*"All things considered, ESMA suggests limiting settlement information to "CSD participant or indirect participant" field. This field would provide information on the custodian of the SFT counterparty and could help address concentrations and reliance on certain CSD participants, as well as to monitor the link between the different services such entities provide. ESMA would like to clarify that the counterparties will be required to report the first entity in the custody chain. For example, if an SFT counterparty has an account with a global custodian that holds securities at a CSD via a local agent, the SFT counterparty would report the global custodian as indirect CSD participant in the "CSD participant or indirect participant" field. In response to the questions from the Discussion Paper respondents, ESMA would like to clarify that this field is required in all cases, even if the SFT settles outside of the CSD.*

Place of Settlement would be more meaningful data with regards to settlement information. Where the client holds its stock does not provide much information on the way of settlement or use of SFTs. In addition, it does not take account of the nature of settlement used by agent lenders, i.e. that securities are moved in two legs - firstly the security is moved from the client's custodian account to the agent lender wash account, and secondly the security is moved from the agent lender wash account to the counterparty's account. ESMA should clarify the rationale for requiring this information, DB believes Place of Settlement provides more meaningful information.

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

We agree with reducing the number of data elements relating to master agreements but believe master agreement type would be sufficient for the purposes of SFTR reporting; master agreement version should not be required. It should be noted that all master agreement information is stored independently of trade systems and thus would require infrastructure spend to be able to report this information in the transaction reporting table.

We note that the master agreement type field within the ITS does not provide a code for PB agreements. PB agreements are generally bespoke to each prime broker and we therefore understand why the list of master agreement codes provided in the ITS does not include them. However, they generally include the same terms so, to avoid all margin loans being reported with a bilaterally agreed unique code, ESMA should add a code for PB agreements to the ITS. We propose that this code be "PBA" as this is how Prime Brokers typically refer to PB agreements.

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

The added value of this information to monitor financial stability is not clear, but If ESMA requires this information then we agree with the proposed approach to remove this information from SFTR reporting and obtain it through a market wide survey.

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

For an Agent Lender, indemnifications are not measured at transaction level nor at client level. Indemnification risk is measured at counterparty (e.g. borrower) level, spanning all indemnified clients. Indemnifications across providers can vary significantly. For instance, some Agent Lenders may indemnify cash received via a securities lending transaction that has been invested in reverse repo. The level of 'cover' offered to clients that have an indemnity is usually limited to 'margin shortfall'.

In the event of a counterparty default, the lender would liquidate collateral under the terms of the relevant master agreement to raise proceeds to replace the lent securities. In the event of insufficient proceeds, then the indemnity provider might pay the difference. Indemnity risk is often measured based on the Agent lender's calculation of Risk Weighted Assets (with any associated capital costs), at counterparty (not Agent Lender's client level or transaction level) level and would be based upon each firms internal calculation methodologies. It may be a more cost efficient

method to collect aggregate information from participants if possible using a periodic market-wide survey.

### 5.1 Operational standards for data collection

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

We agree.

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

We recommend a significant reduction in the number of fields used within the reconciliation to ensure a higher proportion of matched trades. The number of fields should be limited to the basic economics of the trade to ensure meaningful reconciliation. There is also a mismatch between T+1 and S+1 information. See also our responses to Q77 and Q80.

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

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

As per ESMAs comments in point 352, this process would be unnecessary, costly and error prone to repeat the reconciliation for all collateral elements for each SFT. Currently collateral is not booked at SFT level, so all collateral will be reported net at agreement and counterparty level. A separate process to reconcile collateral is required and the collateral should also be reported separately from the loan data. Meaning when collateral is reported in table 2 ("loan and collateral table"), the loan fields do not need to be reported aside from fields 9 -11 which ESMA are proposing will be used to link collateral.

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

Yes, we understand that ISO 20022 is commonly used for this type of data.

Additional comments:
Paragraph 364
*Additionally, ESMA also considered that certain data fields might not be fully matched and proposed that some degree of tolerance should be applied. While determining the actual rules on this aspect, ESMA proposed to take into account the potential trade-offs between quality of data and degrees of tolerance and between the degrees of tolerance and the completion of the reconciliation process. There are different levels of tolerance applied in the industry and across systems. The fields where tolerance can be applied are the following types of fields:*
  *a. Timestamp fields, such as execution timestamp where several minutes' requirement would be applied.*
  *b. Numerical value fields that are calculated such as principal amount on maturity date, where 1 basis point from the midpoint would be applied.*

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

From our perspective the requirement to have the timestamp as a matching field is problematic even with a tolerance value. In particular this is the case for OTC trades, since systems usually only reflect the time by when the trade was 'entered', not the time it was 'traded'.

Paragraph 365
The list of fields to be matched is too onerous, complicated and will create large reconciliation issues at the TRs. In addition, many fields should not be required for matching. The loan fields contain a security number, which is an obvious matching field, but in addition e.g. security 'attributes' are listed such as type of asset which are superfluous. The same comments would apply for collateral. The requirement to simply provide, or reconciliate Issuer LEI, would be operationally challenging

Please see our comments on the separate excel for further feedback regarding fields which should not be matching.

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

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

Please refer to the excel spreadsheet (tab "reconciliation") for more details on this issue. We recommend a significant reduction in the number of fields used within the reconciliation to ensure a higher proportion of matched trades. The number of fields should be limited to basic economics of the trade to ensure meaningful reconciliation. Only data, which can be clearly agreed between counterparties, should be reconciled.

Examples of problematic fields include the requirement for the execution timestamp even with a tolerance value. In particular this is the case for OTC trades, since systems usually only reflect the time by when the trade was 'entered', not the time it was 'traded'.

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

Please refer to the separate excel spreadsheet.

It is important to consider how one-sided reporting will be handled and how reporting by each counterpart may differ e.g. T+1 vs. S+1. For one-sided reporting, there is no obligation for the Agent Lender of the exempt counterparty to provide details on the underlying counterparties to the trade on T+1. This information (e.g. LEI of the Agent lender's client etc) would become only available on S+1. ESMAs suggestion to report the Agent Lender as the counterparty until the underlying lenders are known will cause a large number of breaks each day.

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

No comment.

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

Yes.

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

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

We expect an additional operational burden to review and reconcile the data, to initiate corrections and amendments to the data. Given the proposed number of reconciliation fields and the timing differences for availability of data, a high volume of adjustments is expected. This may have a resource impact on the business.