ICMA EUROPEAN REPO and COLLATERAL COUNCIL

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Response submission from the ICMA European Repo and Collateral Council

Re: ESMA Discussion Paper "Draft RTS and ITS under SFTR"

A. Introduction:

On behalf of the European Repo and Collateral Council ("ERCC") of the International Capital Market Association ("ICMA")[1], the purpose of this letter is to provide feedback on ESMA's discussion paper on *Draft RTS and ITS under the EU SFT Regulation*.

We would like to thank ESMA for the opportunity to respond to this consultation and note that the ERCC supports the objective of ensuring that there is appropriate transparency of SFTs. The ERCC has itself actively contributed to this through its bi-annual surveys published since 2001.[2] In line with the mandate of the ERCC, the focus of this response is on those questions of ESMA's discussion paper that are of particular relevance for the repo market. In addition, we would like to point out that we have attempted to coordinate as extensively as possible, in the limited time available, with other relevant industry associations and would refer ESMA to the responses of those associations for comments specific to other types of SFTs. This includes in particular the response submitted by ISLA in relation to issues specific to securities lending and borrowing, AFME's response in relation to margin lending and FIA's response regarding commodity SFTs.

Given the very limited time available to prepare a response to the extensive discussion paper and the complexity of the topics covered, we are keen to engage in further discussion with ESMA in the course of the Level 2 process. We would like to point out that we are continuing to analyse the proposals put

[1] Since the early 1990's, the International Capital Market Association (ICMA) has played a significant role in promoting the interests and activities of the international repo market, and of the product itself. The ICMA European Repo and Collateral Council (ERCC) has become the industry representative body that has fashioned consensus solutions to the emerging, practical issues in a rapidly evolving marketplace, consolidating and codifying best market practice. The discussions that take place at the ICMA ERCC meetings underpin the strong sense of community and common interest that characterises the professional repo market in Europe. In support of the work of the ICMA ERCC, the ICMA ERCC's Operations Group brings together relevant specialists to focus on all applicable post trade activities and has contributed substantially to this response.

[2] See: http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/repo/

forward by ESMA in this first discussion paper and may wish to follow up on this consultation with more detailed feedback on specific issues raised in the paper, including more detailed comments on the proposed reporting fields covered by the templates in Annex I of the discussion paper (our initial comments on the data fields are included in our response to Q19). We recognise that the development of this new reporting regime within the anticipated timeframe is challenging for all involved. Working together to achieve this could allow ways to be found to best tackle this challenge, potentially leading to some collaborative pilot work to help test the well-functioning of the reporting infrastructure which needs to be put in place. The ICMA ERCC stands ready to play an active role in this collaborative effort.

Before going on to address the specific questions posed by ESMA in the discussion paper, we would like to set out a number of overarching comments which are further articulated in the following paragraphs:

B. Key overarching comments:

1) Use clear definitions consistent with current practice:

There will need to be clarity regarding the overall reporting process and in particular regarding what must be reported. The Level 1 text inevitably sets some specific requirements in this regard, but it will be important to evolve clear, workable and consistent definitions of required reporting elements, as well as other relevant terms applicable across all reporting entities and scenarios. In order to avoid any ambiguities, these definitions should be explicitly set out in the SFTR technical standards. Importantly, the terminology used needs to be consistent with established market practice and the applicable legal documentation, such as the GMRA. The ICMA ERC Guide to Best Practice in the European Repo Market includes agreed definitions for all relevant terms used in relation to repo transactions. We have highlighted a number of inconsistencies in terminology throughout our responses to this consultation.

2) Follow a targeted approach and avoid redundant reporting:

We consider that it will be better to target the most simple and narrowly focussed approach consistent with the fulfilment of the SFTR's requirements; and to get the regime well-functioning for this. A more expansive approach risks complicating the situation and delaying the point at which useful information can start to be derived from this new regime. In this spirit, wherever a given data element can be derived from other reported or static data elements, the former should be derived by the Trade Repository (TR). In order to avoid unnecessary burden for firms and ensure data quality, firms should not be required to report these elements. It is important to keep in mind that any additional element to be reported increases the risk of data inconsistencies and matching fails. Examples for this would include using ISINs to identify associated static data details, such as the currency of an issue and the issuer. Similarly, the classification of data elements, e.g. collateral quality, should be performed centrally by the TR in order to ensure consistency. Leaving it to firms, especially without precise guidance, will degrade the quality of responses. If precise guidance can be provided, there is no reason why classification cannot be done centrally by the TR. As a result, ICMA would strongly encourage ESMA to significantly reduce the number of data items that firms are required to report and to closely work together with TRs in order to assess how the data can be enriched in order to allow supervisors to receive all the data they need. This coordination with TRs in particular has proved to be a critical element with previous reporting initiatives. As part of this response, we provide a mapping of fields that we believe are either not appropriate as reporting fields or that can be removed as they can be derived by TRs based on static data or other data items reported by firms.

In this context, we would also like to draw ESMA's attention to an existing overlap between SFTR and MiFIR transaction reporting. While we acknowledge and welcome the explicit exemption from MiFIR reporting requirements of all transactions that will be reported under SFTR, we also note that this

exemption does not extend to SFTs that have been explicitly exempted from SFTR reporting, in particular SFTs with ESCB counterparties. We strongly disagree with this approach as we believe that the SFTR provides the only appropriate framework to report SFTs and that the inclusion of the aforementioned transactions in MiFIR transaction reporting goes against the clear political decision to exempt these trades from SFTR reporting obligations.

3) Collect information directly from FMIs:

Wherever possible, data should be collected directly from the relevant financial market infrastructures including electronic trading platforms, tri-party agent repo systems, CCPs and CSDs.
In the European market, these may account for over 80% of repo business. Huge economies of scale and timing advantages are therefore available. Such data also comes without double-counting and with greater consistency and accuracy.

4) Make better use of existing trade matching facilities to improve data quality:

We note that the quality of data would be enhanced by the matching of transaction details between counterparties. The industry is currently looking to the development of third-party automatic affirmation services for repo. The ICMA ERCC Operations Group has developed in cooperation with the relevant post-trade vendor firms a standardised template for the Trade Matching and Affirmation (TMA) of Repo, which is expected to facilitate and harmonise the automatic trade matching of repo trades.[3] ESMA and other regulators should work with the industry to integrate this initiative into the development of data reporting. Encouraging the use of trade matching could notably improve data quality and consistency while providing a positive outcome for risk management in the industry. We also note that making better use of automated TMA facilities could remove the arguments for dual-sided reporting and would allow for the implementation of less complex and costly single-sided reporting regimes which ICMA, alongside other industry associations, has consistently called for in the past.

5) Ensure consistency with global reporting standards:

The FSB is playing an important part in creating globally agreed recommendations applicable to SFTs. These should be respected to the fullest extent possible and those areas where the FSB is still engaged in ongoing work should not be pre-empted. In particular, we would like to refer in this context to the FSB's most recent consultation on *Possible Measures of Non-Cash Collateral Re-Use*. The ICMA ERCC has submitted a detailed response to the FSB which more fully sets out our concerns in relation to the re-use of collateral. We respectfully request ESMA to treat the content thereof as an integral part of this ICMA ERCC response to ESMA's discussion paper.

6) Learn the lessons from EMIR implementation:

The experience with reporting under EMIR has led to many problems which are still in the course of being rectified. This is very unsatisfactory for all concerned, so it is important to take sufficient time to build in lessons learned from this experience. Even if this resulted in a short delay to the existing implementation timetable, by avoiding subsequent wasted time needed to be spent on rectification, it would still lead to earlier availability of meaningful information. One important facet of this is that it needs to be established which TRs intend to provide services for SFTs and they need to be required to start from adequately consistent approaches to facilitate the cross TR reconciliation processes which will need to be able to take place.

[3] The TMA template is available on the ICMA website alongside a Glossary of Terms and some background information: http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/short-term-markets/Repo-Markets/repo0/trade-matching-and-affirmation-of-repo-standardised-icma-template/
It is anticipated that the template can be extended to other types of SFTs and will evolve further as the relevant regulatory requirements are being finalised.

C. Responses to specific questions:

3. Registration (Article 5)

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? [para* 54-57*]

In paragraph 56(c) on 'Authorisation/permission' ESMA suggests that the TR should be required to ensure that any "reporting party has been permitted by the entities, if applicable, to submit SFT data to the TR on their behalf" (point (i), 5th bullet point).

This appears to imply that, where a firm has delegated reporting to another firm, the TR would need to ensure the delegated to entity has permission to submit these reports, presumably by some proof of delegation agreement being in place. This is not consistent with EMIR requirements. Under EMIR, submitting firms are sending reports flagged as being on behalf of both parties and can, if needed, submit on behalf of other parties using internal identifiers. The proposal to require proof of permission seems particularly problematic given that the SFTR level 1 text requires financial counterparties to report on behalf of certain SMEs. This would also imply that all delegating parties/SMEs would need to have LEI codes in order to be identifiable (see our comments on Q15).

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? [para 71-90]

For the sake of consistency with other regulatory initiatives in Europe, we would support the use of the ISO20022 format. This has already been piloted and used for similar regimes, such as the ECB's MMSR and the Bank of England's money market reporting regime.

However, there are some general concerns related to the proposed ISO20022 format that would have to be addressed:

1. Global consistency: While Europe is increasingly mandating the use of the ISO20022 format, this does not seem to be the case for other major jurisdictions such as the US, or Russia, which seem to be moving towards the use of an FpML format for SFT reporting. While we understand that both formats are not necessarily inconsistent, it would be important to ensure global convergence with a single globally agreed format being clearly preferable. Neither format yet fully and accurately accommodates SFTs and early stage work will be needed to rectify this.

2. ISO governance: 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.

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

The ISO20022 format is supported by a complex and robust governance framework. As mentioned above, it would however need to be ensured that the governance arrangements provide sufficient flexibility to change the relevant standards in a timely and efficient way whenever necessary. We also note that the relevant group that manages the ISO20022 standard, WG TC68, is not exclusively a Regulator led group but also serves commercial purposes.

Q13: Do you foresee any difficulties related to reporting using an ISO 20022 technical format that uses XML? If yes, please elaborate. [para 91-92]

Subject to our response to Q12, we do not see any major problems with the technical format; and note that this is already used in context of the ECB and Bank of England requirements.

4.2 Reporting logic

Q14. Do you foresee issues in identifying the counterparties of an SFT trade following the above-mentioned definitions? [para 93-101]

In the case of repo, identifying the counterparties should be relatively straightforward, but it should be recognised that there are some instances of agency repo, where this could be more challenging. More specifically, the definition of 'broker' in para.97 needs clarification. Does it mean an agent? 'Intermediaries' can act both as principals or agents.

One further concern relates to confidentiality and bank secrecy issues. When trading with non-EEA counterparties, the reporting of the counterparty details might infringe local bank secrecy and confidentiality rules. Disclosure consent may be a solution. However, masking of counterparties' details should be possible at least until the moment disclosure consent is obtained or in case of conflicting rules. In any event, just like for EMIR, the regulators need to find a solution for this problem at global level.

There might be additional complications for other types of SFTs. For detailed comments specific to other types of SFTs we would like to refer ESMA to the responses of the other relevant trade associations.

Q15. Are there cases for which these definitions leave room for interpretation? Please elaborate. [para 93-101]

Apart from the issue outlined in our response to Q14, the definitions seem to be generally accurate and consistent with similar EU laws.

We would however request that ESMA clarify the treatment under SFTR of natural persons as counterparties to SFTs. Article 2 of the SFTR level 1 text states that the scope of the regulation applies to "counterparties" to an SFT. Article 3 distinguishes between financial and non-financial counterparties, whereas the latter means an "undertaking" established in the Union, going on to define "established" as, inter alia, "...if a counterparty is a natural person, where it has its head office....". This definition does not seem appropriate for natural persons which do not typically have a head office. In this context, it is worth noting that the European Commission in its FAQs (No.14) in relation to EMIR states that individuals not carrying out an economic activity and who are consequently not considered as

undertakings are not subject to the reporting obligation under EMIR. We would therefore ask ESMA to clarify whether this is also true for SFTR.

As regards the mandatory use of LEIs mentioned in paragraph 102, while we generally acknowledge the benefits of standardised identifiers such as LEIs, we would like to point out that not all possible parties are currently eligible to apply for an LEI. For instance, this may be an issue in case of some family-owned businesses being the ultimate parent of SFT counterparties. Moreover, even if a party is eligible to obtain an LEI, it may happen that the counterparty has not requested the LEI or the LEI has expired. In such cases, trading entities should not be expected to enforce the use of LEIs by their counterparties and clients and they have no regulatory authority to do so.

For this reason, in line with other transaction reporting regimes, some flexibility should be provided in relation to the use of LEIs, i.e. the technical standards should provide for possible exceptions or alternatives where LEIs are not available. This could be to allow in such cases the use of BIC or internal identifiers.

As regards the use of UTIs, we note that the discussion paper does not include any further guidance on the applicable methodology. In light of the EMIR experience, we would stress the importance of having clear and consistent guidance on the use of UTIs in place before this concept can be effectively applied. In the case of repo in particular, the problems with UTIs could be further exacerbated by the high volume of very short-dated trades and thus the need to issue and match a large amount of UTIs in a very short timeframe, which might be best accommodated by the use of centralised solutions. Besides the need for clear guidance, we would also stress the particular need for a globally consistent approach on this issue. ESMA should follow closely the work undertaken by CPMI-IOSCO on UTIs. As this work is currently focused on OTC derivatives, more work is needed on a global level to extend this concept to SFTs, carefully taking into account the specifics of these markets.

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? [para 103-108]

In general yes, but this will depend on what is meant by ‘comprehensive’ and on the deadline for reporting. Reporting of collateral for instance is in many cases not possible by the deadline currently proposed (see e.g. comments on Q72).

While it is possible for firms to report comprehensive information for SFTs at transaction level, this is extremely onerous to implement. We would urge ESMA to carefully balance the potential benefits in terms of supervisory and financial stability against the substantial implementation costs and challenges linked to an overly extensive reporting regime. It is important to note that any additional reporting field will also have a cost in terms of data quality. Overall, a targeted and proportionate approach would certainly be preferable to a regime that aims to collect as much data as possible in the hope that it might happen to prove useful at a future stage.

One important challenge in this context relates to information on margining which in many cases is not conducted on a transaction by transaction basis but on a portfolio level. This is an issue mainly for non-CCP-cleared trades.

Another major challenge relates to any required tracking of re-use of collateral, which is in most cases impractical (see our comments on Q113-117).

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? [para 103-108]

In the past, ICMA has argued consistently for the collection of data on a position level rather than on a transaction by transaction basis. Subsequently, a clear political decision has been taken, reflected in the SFTR level 1 text, to adopt a transaction level approach. We therefore do not think that the complementary collection of position level data would be consistent with this approach taken by the co-legislators. We also do not think this is absolutely necessary, since, over time, the construction of position level information by trade repositories, although a very complex exercise, should in principle be possible based on transaction reports (in this scenario reporters should be responsible for the transaction level data and not be expected to validate the derived position level information).

As ESMA refers to EMIR, it is also important to note that the purpose of the position level reporting of CCP-cleared trades in EMIR is very specific and not comparable to SFTR requirements. Under EMIR this approach is limited to ETDs, which match and pair transactions first, before reporting these trades at position-level.

At a later stage, there might be a case for periodic reporting of position data on a few major data elements (those to be aggregated on a global level by the FSB) in order to verify transaction data but this only needs to be infrequent (e.g. monthly). Any such reporting should be strictly in line with the FSB requirements and not go beyond that. This is important for consistency reasons and to keep the reporting burden for firms as manageable as possible. In terms of timing, any such requirements should only be defined once the FSB requirements have been finalised in order to allow full consistency.

Q18. Is there any need to differentiate between transaction-level data and position-level data on loans from financial stability perspective? Please elaborate. [para 103-108]

ICMA's past advocacy of position level data relates to the fact that ICMA considers this to be of greater relevance when considering financial stability. Transaction data in itself is of limited value from a financial stability perspective.

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

In principle, over time, yes. See comments on Q17 above.

In the following, we set out our **detailed initial comments and concerns with the data tables in Annex I of the discussion paper**. The comments are focused on tables 1-3 (repo) and tables 4-6 (sell/buy-back). As explained in the introductory remarks, we note that more time is required to conduct a full review of the tables.

6.1.1 Repurchase agreements and reverse repurchase agreements

ICMA comment: We suggest that the heading should refer to 'repurchase transactions' rather than 'repurchase agreements', as the latter is often used to mean master agreements or as a generic term for all types of repo. 'Repurchase transactions' is used in the GMRA and by the ECB's SFT Datastore.

6.1.1.1 Counterparty data (Table 1)

- **Field 1 (**Reporting timestamp): This data field should be added by the trade repository when the record is received.
- **Field 4** (Sector of the reporting counterparty): We suggest to remove the field. This should be derived by the TR using a static database constructed in co-operation with ESMA.
- **Field 5** (Country of the branch of the reporting counterparty): Remove. This will be covered by upcoming LEI ROC standards and should be derived by the TR. See ICMA's responses to Q74 – 77.
- **Field 6** (Country of the branch of the other counterparty): Remove. As per field 5.
- **Field 7** (Counterparty side): This could be removed. See ICMA's response to Q29.
- **Field 9** (Other counterparty): ESMA should advise market participants how to report a counterparty who does not have an LEI (comment also applies to other fields).
- **Field 10** (Beneficiary): Remove. In line with our comments to Q79, we do not believe that the concept of beneficiary is relevant in the context of repo transactions.
- **Field 13** (Clearing Member): As explained in our comments on section 4.3.6 (clearing information), we believe that the proposed fields related to CCP-clearing can be derived from information provided directly by CCPs and should be removed from the reporting template.
- **Field 14** (CSD): Remove. If ESMA would like to collect information on the issuer CSD this can be easily derived based on the ISIN (there is generally only one issuer CSD per security). See ICMA's responses to Q120 – 124.
- **Field 15** (CSD participant or indirect participant): Change to 'settlement agent'. See ICMA comments on Q120 – 124.
- **Field 17** (Collateral re-use): Remove (see our comments on Q113-117). In case retained it will be necessary to include a further format to cover the case of "indistinguishable" (where Article 4 SFTR allows for an exception to the requirement to report whether collateral has been re-used); and, in either case, the requirement to respond to this question is only sensibly applicable in case the collateral is available for re-use
- **Field 18** (Value of re-used collateral): Remove. See ICMA comments on Q113-117.
- **Field 19** (Estimated re-use of collateral): Consistent with Article 4 SFTR, this should only be required in relation to the amount of re-use of distinguishable collateral (and taking into account the technical specificities of pools of assets).
- **Fields 16-19:** In general, it is not clear why fields 16-19 are included in table 1 together with counterparty information, when they are collateral data (which is table 3)

6.1.1.2 Transaction data (Table 2)

- **Field 1** (UTI): A clear methodology needs to be provided for the use of UTIs; This should be defined only with due reference to the related work of CPMI-IOSCO, but recognising that the context is SFTs not derivatives. Finally, in our view a centralised solution for issuing UTIs should be considered. See ICMA comments on Q15.
- **Field 2** (Report tracking number): As explained in our response to Q80, we do not believe that this is necessary.
- **Fields 4 - 6**: As explained in our comments on section 4.3.6 (clearing information), we believe that the proposed fields related to CCP-clearing can be derived from information provided directly by CCPs and should be removed from the reporting template.
- **Field 7** (Method of trading): As explained in our comments on Q127, we do not believe that this can be consistently classified by reporting firms.

- **Field 9** (Place of settlement): Remove. If ESMA would like to collect information on the issuer CSD this can be easily derived based on the ISIN (there is generally only one issuer CSD per security). See ICMA comments on Q120 – 124.
- **Field 12** (Applicable annexes to the master agreement): Remove. In line with our comments on Q125.
- **Field 13** (Bilateral Amendment): Remove, as per field 12.
- **Field 15 – 16:** The description of the details to be reported does not seem to correspond to the repo scenario. This should be "the exchange of cash versus collateral".
- **Field 17** (Termination date): We understand that this field would be reported as a modification.
- **Field 19** (Earliest call-back date): Remove. Implied by field 18.
- **Field 20** (GC indicator): Remove. This should be inferred by the TR from other available information. The definition of GC is not straightforward and needs great care.
- **Field 21** (DBV indicator): Remove. Particularly given the reforms of DBV, this should be subsumed in the tri-party indicator. If data specifically on DBV is required, this information could be more efficiently collected directly from the relevant provider CREST/ Euroclear.
- **Field 22** (Method used to provide collateral): All GMRA repo (and GMSLA transactions) will be TTCA – the information can therefore be easily derived by the TR.
- **Field 24** (Termination optionality): Remove. This can be derived from fields 17 (Termination Date), 18 (Minimum Notice Period) and 19 (Earliest Call-Back Date). It is better that the TR derives this, as there are no unified definitions / market practices on evergreens and extendibles.
- **Field 26** (Day count convention): Remove. Static data to be completed by TR on the basis of the currency of the money market from which the report was received. As a general remark, we note that most of the proposed conventions are not used for repos since they are bond market conventions while for repo only money market conventions are relevant.
- **Field 29** (Floating rate reference period multiplier): We would ask ESMA to explain why this field is needed. We are not aware that this variable is used in the repo market.
- **Field 31** (Floating rate payment frequency – multiplier): See 29.
- **Field 34** (Spread): See 29.
- **Field 35** (Adjusted rate): We would ask ESMA why this field is needed. This seems to be an FpML specific field which does not seem to be applicable for repo.

6.1.1.3 Collateral data (Table 3)

- **Field 7** (Currency of the collateral nominal amount): Remove. This should be derived from the ISIN.
- **Field 8** (Price currency): Remove. See 7.
- **Field 10** (Collateral market value): Remove. This can be derived from fields 9 and 12.
- **Field 11** (Haircut or margin): Remove. This can be derived from 37 (Table 2) and 10 (Table 3).
- **Field 12** (Collateral quality): Remove. This should be derived from the ISIN.
- **Field 13** (Maturity of the security): Remove. See 12.
- **Field 14** (Jurisdiction of the issuer): Remove. See 12.
- **Field 15** (LEI of the issuer): Remove. See 12.
- **Field 16** (Availability for collateral re-use): Remove. This can be derived. See our comments on Q118.

6.1.2 Sell-buy back and buy- sell back transaction

General comment: Tables 4-6 should be merged with the repo tables (1-3), but adding one data field which allows to distinguish the two types of repo. This is further explained in our comments on Q31.

Comments below to note only in case ESMA decides that there must be a separate schedule (which should then also consider applicable read across to 6.1.2 of comments for 6.1.1):

6.1.2.2 Transaction data (Table 5)

- **In general:** Up to field 22, the transaction data schedule for sell/buy-backs is identical to that for repurchase transactions. However, fields 23-36 of the repurchase transaction schedule (Table 2) are missing from the sell/buy-back transaction data schedule (Table 5). This, it would seem, is because they are about floating-rate repo and there are no floating-rate sell/buy-backs.
- **Fields 23 -27:** Seem to replicate items 1-5 of the repurchase transaction collateral data schedule (Table 3), but with different names, and are then repeated as items 1-5 of the sell/buy-back collateral data schedule (Table 6). It is not clear to us why this is suggested. Both templates need to be as closely aligned as possible (if a separation is deemed necessary). This applies to the following fields as well.
- **Field 28** (quantity or nominal amount): Corresponds to repurchase collateral data (Table 3) item 6: collateral quantity or nominal amount.
- **Field 29** (currency of nominal amount): Corresponds to repurchase collateral data (Table 3) item 7: collateral quantity or nominal amount.
- **Field 30** (spot price): Corresponds to repurchase collateral data (Table 3) item 9: collateral quantity or nominal amount.
- **Field 31** (forward price): This is a new item introduced by the sell/buy-back transaction data schedule (Table 5). This is the traditional way of quoting sell/buy-backs but is often these days substituted by the repo rate. ESMA seems to be trying to justify the separation of sell/buy-backs. Rather than splitting sell/buy-backs from repurchase transactions on the base of price quotation, it would be better to offer alternative ways of reporting the repo price: fixed rate or forward price. Interestingly, the TR will have to derive the repo rate for sell/buy-backs from the forward price (which begs the question, why can't the TR derive more data rather than having it all reported).
- **Fields 33-35:** Replicate fields 37-39 of the repurchase transaction data schedule (Table 2) but with different names, which is not necessary and unhelpful.
- **Field 33** (trade amount on value date): Corresponds to repurchase transaction data (Table 2) item 37: principal amount on value date.
- **Field 34** (trade amount on maturity date): Corresponds to repurchase transaction data (Table 2) item 38: principal amount on maturity date.
- **Field 35** (trade amount currency): Corresponds to repurchase transaction data (Table 2) item 39: principal currency.

6.1.2.3 Collateral data (Table 6)

The sell/buy-back collateral data schedule (Table 6) is identical to the collateral data schedule for repurchase transactions (Table 3), despite many items being replicated in the sell/buy-back transaction data schedule (Table 5).

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

Position level reporting would require a significantly smaller number of data elements, the case for which should (as already noted) be limited to any need to contribute to the fulfilment of FSB requirements.

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. [see below]

See our comments on section 4.3.5 below.

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. [para 112-117]

On balance, we support using Approach A, which seems more logical and less cumbersome than the proposed alternative approach B and moreover has the significant advantage that it is aligned with the EMIR approach.

In any case, it will be important to leave some flexibility to the TRs which will ultimately have to implement the format and need some flexibility in order to make the reporting regime workable.

As further explained in our response to Q23 below, we note that some of the terminology used in section 4.2.2. appears to be out of line with market practice and should be suitably modified.

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. [Table 1, p.35]

Some of the terminology used is not in line with current market practice. The following changes should be made to the proposed action types in table 1 (p.35) and elsewhere in the document:

- 'Re-pricing' should be replaced, as it only refers to the early termination and replacement of sell/buy-backs. The appropriate term for re-fixing the price of a repo would be 're-rating'. Given the need to cover all possible scenarios, we would however recommend using a more descriptive term to capture accurately the required information in each case. A related question, would be if 're-pricing' aims to includes regular updates of indices such as EONIA? Given that the identity of the index will be reported in the original trade, getting firms to update this is unnecessary and should not be considered as a material/reportable modification.
- 'Principal increase' should be changed to 'Principal change', in order to cover both cases of increase and decrease.
- Finally, we note that it would be preferable to make 'principal change' and 're-pricing' (and even 'collateral update') subsets of the action type 'modify' which would make this action type transaction-independent.

As pointed out in the key overarching comments above, it is extremely important that ESMA use the correct terminology so as not to confuse reporting firms. As a useful source, ESMA may wish to refer to the ICMA ERC Guide to Best Practice in the European Repo Market, which includes agreed definitions for all relevant terms used in relation to repo transactions.

Q24. Do you foresee any benefits or drawbacks of implementing the proposed reporting logic of event types and technical actions (Approach B)? Please elaborate. [para 118-121]

As mentioned, we think that approach A is preferable, as it is more logical and less cumbersome than approach B. In particular, option B looks more complicated, given that each Technical Action would need to be tailored to the Event Type, whereas option A would only seem to require amended fields on the original transaction report to be filled out.

A further disadvantage of approach B is that this would not be consistent with EMIR requirements, as ESMA rightly points out. For firms that are managing their transaction reporting in a centralised way across asset classes this could cause significant costs and operational problems.

Q25. Do you agree with the proposed list of event types and technical actions? If not, which ones should be included or excluded? [Table 2, p.36] [Event types: para 122-126, lifecycle events: para 127-133]

Besides the general concerns in relation to approach B explained above, we would see the following concrete problems with the proposed list of event types and technical actions in Table 2:

- We would question the applicability of the technical actions 'New' and 'Modification' for life cycle events.
- It is not clear to us why Termination and Re-pricing life cycle events cannot be part of the Adjustment life cycle.
- The Re-pricing life cycle event needs relabelling, as previously explained (see Q23).
- An Error option would have to be added.

As further explained in our response to Q31, no distinction should be made between repo and buy/sell-back transactions as these have purely operational differences which are not relevant from a supervisory perspective. There is probably still a need to formally distinguish both types of SFT, for operational/reconciliation purposes, but this could be more easily achieved through a specific reporting field which would allow to flag a transaction as a repo or a sell/buy-back. The remainder of the template (and the reporting process more generally) should be identical, given the economic equivalence of both and in order to avoid any misinterpretations. We would disagree with ESMA's statement in paragraph 124 that having a separate sell/buy-back trade event would reduce the complexity of the reporting schema. As further explained in our response to Q31, we would instead argue that this would significantly increase the complexity of reporting and institute an artificial segmentation of the repo market.

In paragraph 130, ESMA's DP talks about a "cash lifecycle event", applicable in relation to securities lending. It is unclear to us why there could not also be adjustment events "that would consist only of a cash element" in repos (and other SFTs), which could be associated to "principal in/decreases" or cash margin payments. Care needs to be taken not to assume rigidities in the reporting scheme for one particular type of transaction and, rather, to establish a flexible approach to allowing various permutations of lifecycle event in relation to all SFTs.

Q26. Do you foresee any need to introduce a unique reference identifier for the lifecycle events or for technical actions? Please elaborate. [para 136]

We do not see a need for a unique reference identifier for lifecycle events or technical actions and would like to remark that this would be an extremely onerous exercise.

Q27. From reporting perspective, do you foresee any drawbacks in keeping consistency with EMIR? If so, please indicate which ones? [para 137-139]

As a general remark, we would like to stress again the importance of reducing the number of reporting fields to be completed by counterparties as much as possible in order to optimise the quality of the data to be received by authorities and to maximise matching rates. Several fields currently included in the template in ANNEX I can be easily derived from other information provided. Trade repositories or central utilities are clearly best placed for doing this task wherever possible. Any redundant fields should therefore be removed from the template in order to facilitate the matching of reports (see our specific comments on the data fields included in our response to Q19).

The direction of the trade is one example where this seems possible. We would recommend removing this field from the template in order to avoid potential ambiguities. It is also not clear why this information is relevant for supervisors. For repo, in most cases, the concept of buyer/seller is relatively straightforward and the information on the direction of the trade can be easily derived from the flows of the trade.

There are however scenarios where the distinction is much less clear and the "direction of the trade" reporting field could create some issues. One obvious example would be SFTs where securities are exchanged against securities (i.e. securities loans).

From a legal point, the direction of the trade (i.e. which counterparty is considered as buyer and which one as seller) should be clearly determined in the trade confirmation. This might however be less easy to derive for reporting purposes.

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? [para 140]

Seller and Buyer are defined terms under the GMRA but parties to the agreement may act in either capacity under the agreement - this will be determined at transaction level.

In this context, we note CPMI-IOSCO's ongoing work on the "Harmonisation of key OTC derivatives data elements (other than UTI and UPI)" which, albeit being conducted in the context of OTC derivatives, may shortly provide a clarified approach for the identification of buyer/seller.

Q29: Are the proposed rules consistent with the existing market conventions for determination of buyer and seller? If not, please provide alternative proposals. [para 140]

The proposed rules in paragraph 140 appear to be consistent with the definitions of Seller and Buyer in the GMRA.

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 repo scenarios seem accurate. We would however point out that we are not aware of any scenario in repo markets that involves a broker taking principal risk. Scenario 2 therefore does not seem 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.

Overall, the presentation of the second scenario is confusing and could be simplified. In particular, it is not clear to us why ESMA chose to depict a scenario with multiple counterparties involved, given that the outcome for reporting purposes will simply be three separate repo trades.

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.

We agree with ESMA that the scenarios described accurately capture buy/sell-back and sell/buy-back trades.

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 repurchase transaction 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. Note that 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, we believe it will 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 (see detailed comments on the data fields in our response to Q19) but including a field to distinguish the two types of repo.

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 an SFT.

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

In relation to repo scenario 3, we do not agree with ESMA's statement in paragraph 149 (last bullet point) that "In the case of a bilateral trade (…) that the counterparties submit to clearing, Counterparty 1 and Counterparty 2 would need to also report the original bilateral trade." We would like to point out that in the case of repo the initial bilateral trade will typically be conditional on the CCP-clearing actually taking place. If, for any reason, the trade cannot subsequently be submitted to the CCP, the initial trade will not be valid. Post-trade registration to the CCP should therefore be treated in exactly the same way as CCP-clearing. No report of the initial trade should be requested as this would be redundant and misleading. We understand that this is different from the practice in OTC derivatives markets for instance where the validity of the initial trade is often not dependent on the subsequent registration by the CCP and where the reporting of the initial trade would therefore make more sense.

Regarding scenario 4, we would remark that this is not a common scenario in the European repo market. We understand that the service as clearing member (CM) for repo has been offered by banks in the past, but this seems to be disappearing as a business model.

We agree with ESMA that repo scenario 5 ("agency clearing model") does not exist in Europe and is therefore hypothetical. We are also not aware that this scenario exists in other jurisdictions. We understand that there are initiatives to develop a similar model but it is unclear whether this is feasible.

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

No.

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

A scenario similar to the securities lending scenario 2 ("bilateral securities lending trade with agency intermediary") also exists in the repo space. For the sake of completeness, an additional scenario should thus be added covering such agency repo.

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. See our response to Q31.

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

Yes, in the same way as repo trades.

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.

No.

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. [para 183-185]

As mentioned in our comments to Q16 and section 4.3.5 on collateral reporting below, information on collateral is typically only available after settlement date, ie once the collateral has been allocated. In most cases this would not allow firms to report this information by the proposed deadline on T+1.

In the case of tri-party repo more specifically, it is important to note that all the related collateral management activity is being outsourced to the relevant tri-party agent. Counterparties are not independently aware of the underlying collateral movements which are very frequent and run by tri-party agents mostly based on automated optimisation algorithms. Reporting firms will have to rely for reporting purposes entirely on the information provided by tri-party agents, which they would simply pass on to trade repositories. This additional step in the reporting chain seems unnecessary and will

make it even more challenging for firms to meet the proposed timeline for reporting. It might also lead to further delays in case tri-party agents do not provide the data on time.

What matters for firms using triparty agents is that they have clearly specified the eligible collateral (the collateral "basket") and that they are provided with evidence that, at each point in time, an adequate amount of the specified collateral is correctly in place. The specific details of which collateral is being used, from amongst the population of eligible collateral, at a specific point in time is of secondary importance.

In line with the Key Overarching Comments above, we would therefore remark that tri-party agents are clearly best placed to provide the information on collateral allocation directly to trade repositories. Extracting the required reports directly from tri-party agents would promise significant benefits in terms of increased efficiency (economies of scale), better data quality as well as timeliness of reporting.

Finally, we would also note that there needs to be a consistent approach on the applicable data cut off times in relation to tri-party collateral information. In particular, this needs to take into account the global nature of the business, including tri-party agents.

4.3 Content and structure of the SFT report

Q73. Would you agree with the proposed split between the counterparty and transaction data? [para 187]

Yes. We agree with a split in counterparty and transaction data, which is consistent with current practice. As regards some of the individual fields, the underlying rationale for the proposed split is in some cases less clear (see our specific comments on the data fields included in our response to Q19).

Q74. Is the reporting of the country code sufficient to identify branches? If no, what additional elements would SFT reporting need to include? [para 191]

As ESMA rightly states, the LEI ROC 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 clearly be preferable. Creating an inconsistent interim solution, and requiring firms to implement this solution, should be avoided if at all possible. This is true in particular for the reporting of non-EU branches of EU counterparties, which, as ESMA points out in paragraph 192, will only be relevant for the global aggregation of data by the FSB.

In case the LEI branch identification is not available by the time that SFTR reporting goes live and ESMA nevertheless decides that the identification of branches needs to be available from the start, the ISO country code seems to be sufficient for the purposes stated by ESMA in paragraph 190 and seems also in line with revised EMIR requirements.

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

As stated above, an interim solution based solely on the ISO country code would cause incremental implementation costs as firms would have to source the ISO 3166 country code for reporting purposes, and programme them into the SFT reporting. In addition, as pointed out in our response to question 27, any additional field introduces potential problems for the matching of reports and should be avoided unless strictly necessary for supervisory purposes.

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?

In line with the arguments above, a more granular approach would seem unnecessary and should be avoided, as it would further increase the costs of such interim solution.

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

N/A

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. [para 193-196; Table 3]

No. We agree with the reasoning of ESMA in paragraph 194.

Q79. Are there any other cases which are not identified above, where the beneficiaries and the counterparties will be different? Please elaborate. [para 197-200]

We agree in principle with the approach proposed by ESMA and would agree that the beneficiary concept is of limited applicability for SFTs. Irrespective, it is also important to note that under EMIR a beneficiary, where applicable, is only identified by one of the counterparties to the transaction, i.e. the relevant counterparty to which the beneficiary is known.

The last sentence of paragraph 200 is not clear to us. What does ESMA mean with concluded “on behalf of another entity”? How would this differ from the repo trade scenarios described above involving a broker? If the broker executes on behalf of a client, i.e. as an agent, the client would be considered as counterparty and would therefore report the trade. In case the broker executes the trade on own account, it is considered as counterparty and would report the trade. In this case, it is not possible to attribute the trade to an underlying beneficiary either (as this would be reported subsequently as a separate trade).

Q80. Do you agree with the proposal to link the legs of a cleared transaction by using a common identifier? [para 201-217; summary table 4, p.63]

We do not believe that the linking of cleared transactions would add significant value in terms of the objectives outlined by ESMA in paragraph 203. In particular, it is not clear to us how the ability for supervisors to link trades would help in a significant way to identify financial stability risks. The information on interconnectedness will not be significant from a supervisory perspective, given that parties clearing across a CCP will be trading anonymously, except in the cases of transactions cleared post trade, which are a small proportion of CCP business (declining in share and often a temporary expedient until an ATS link can be set up). As pointed out in our response to Q32, we also do not believe that it is justified from a risk perspective to distinguish the latter from CCP-cleared trades executed electronically, given that their validity is dependent on the clearing taking place.

Rather, what clearly matters in this context is the robustness of the CCP, as it is the counterparty to every CCP-cleared trade, and this is indeed the subject of significant separate work streams to ensure that there is a regime which provides in a satisfactory manner for CCP recovery and resolution. The focus should be on CCPs and their exposure to particular counterparties, and vice-versa, instead of trying to look at links across a CCP which do not themselves represent principal risks. And it should be borne in mind that CCPs already actively limit concentration risk to members, as well as providing netting and collateralising exposures. CCPs themselves, as reporting entities, will be able to identify any problems in the matched nature of their cleared trade activity and to identify separately where they are engaged in SFTs as part of their own treasury/collateral management activity.

Finally, as ESMA points out in paragraph 208, the only case where the linking of SFTs could have some merit in this respect would be the principal clearing model. As pointed out in our response to Q32 above, this model is not very common in the repo market. With this in mind, it is unlikely that any information or consequence regarding dominant market players or high levels of interconnectedness can be identified through the linking of SFTs.

As a more general remark, we would question ESMA's underlying logic set out in paragraph 201. We do not believe that by ensuring that information on individual SFTs is "as comprehensive as reasonably possible" authorities would necessarily be in a position to "engage in richer network analysis of the structure and dynamics of the SFT market". As pointed out in the Key Overarching Comments above, in our view it will be better to focus on what most specifically needs to be known from a supervisory perspective and to ensure that this is accurately established rather than clouding the picture with more data just because it might theoretically prove interesting and thus causing costs and data inaccuracies that strictly need not be suffered.

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

As pointed out above, we do not believe that the linking of SFTs is necessary. If it is nevertheless decided that a linking of (certain) SFTs is necessary, the concept should at least be consistent with the EMIR approach (although the rationale for linking derivative trades under EMIR is different).

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? [Para 221-226]

1. Trade based collateral allocation vs net exposure collateral allocation (221-224)

For repo, trade-based collateral allocation is more relevant. Collateral allocation based on net exposure is however also possible, in particular in relation to open repo and triparty repo.

In relation to Table 6 (p.65-68), it is not clear to us how a one-to-many relationship between SFT and collateral can exist in row 1 (repo trade not involving collateral pool or collateral basket). How would this differ from the case of an SFT secured against an applicably defined collateral basket?

2. Collateral allocation on trade date vs collateral allocation on value date (225-226)

From a repo perspective, the description in paragraphs 225 and 226 is generally accurate. For further considerations in relation to other SFT types, we refer ESMA to the respective responses of other associations, in particular ISLA for securities lending and AFME for margin lending.

Q83. Is the assumption correct that mainly 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. [Para 228-229]

In principle, the assumption is correct, but note that in case of triparty repo the use of cash collateral does occur to a very limited extent as a temporary expedient where non-cash collateral is unavailable.

It is also important to note that variation margin for repo can consist of both securities and cash. Depending on whether and how variation margin balances need to be reported, this may therefore require the provision of a cash collateral element in the case of repo as well. As explained in our comments to Q16, we note that margining is generally conducted at a portfolio level.

Q84. Does the practice to collateralise a transaction in several amounts in different currencies exist? Please elaborate. [Para 228-229]

No, not at transaction level.

Q85. Do you foresee any issues on reporting the specified information for individual securities or commodities provided as collateral? If yes, please elaborate. [para 230-232 & Table 9]

Some of the fields proposed in table 9 (p.71) are redundant and should be removed. See our comments on the full template included in our response to Q19 above.

In particular, if the ISIN is reported, there should be no need to report the currency of quotation, collateral quality, issuer LEI, jurisdiction of issuer or the maturity date. All this information can be easily derived by the TR, as these are associated static data details; and there will be less scope for reporting error if this referencing is done once by the TR, rather than each and every reporting entity having to separately perform the task. Also, if a transaction is reported as a repo and/or as under a recognised repo master agreement, there is no need to report whether the collateral is available for re-use, as this can be taken as given. Again, the less reporting is required, the lower the error rate.

Q86. Are there any situations in which there can be multiple haircuts (one per each collateral element) for a given SFT? Please elaborate. [para 230-232]

Yes. In the case of a collateral basket with multiple securities, multiple haircuts can be applied (since the haircut is directly related to the specific underlying collateral security). This is done routinely in tri-party scenarios and is also envisaged in the GMRA.

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. [Para 234-240]

Firms should be able to provide a unique identification for collateral pools. In some cases, an ISIN code will be available for sufficiently standardised collateral pools. In all other cases, firms should be able to receive a proprietary identification code from the relevant agents.

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. [Para 234-240]

In most cases, especially in the case of collateral pools, the specific applicable collateral allocation will not be available on T+1 when the initial report is due. Exceptions would be trades that are settled on a same day basis i.e. T+0. Collateral pools can be very widely defined, e.g. covering both equities and fixed income, so it would be wrong to make any assumptions about collateralisation ahead of allocation.

Q89. Are there any issues to report the collateral allocation based on the aforementioned approach? Please elaborate. [Para 234-240]

See response to Q88.

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. [Para 234-240]

By the T+1 reporting deadline only very limited information on collateral is available and can be reported. It is not clear which table the question refers to. If this refers to the collateral elements included in table 1 of ANNEX I (i.e. fields 16-19 of the template), please refer to our response to Q113-117 on re-use and our specific comments on ANNEX I included in our response to Q19.

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)? [Para 241-242]

Most firms would expect to submit separate messages for reporting collateral and other transaction data. This would seem more logical from an operational perspective and should be permitted. Some firms (in particular smaller ones) might nevertheless find it more practical to submit both reports in a single message. We would therefore recommend to leave both options open for firms, given that this does not seem to compromise the consistency of the reports.

Q92. What are the benefits and potential challenges related to either approach? Please elaborate. [Para 241-242]

See response to Q91.

Q93. Do you foresee any challenges with the proposed approach for reporting updates to collateral? What alternatives would you propose? Please elaborate. [Para 243]

A full snapshot is considered easier and more reliable by most member firms and would also minimise reconciliation issues; but again it may be that some firms are organised in such a way that they would find incremental reporting to be preferable so retaining flexibility to report either way would be the best approach. In line with our remarks above, it is again important to note that the format and content of the collateral update reports will in many cases depend on the information that firms receive from tri-party agents.

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? [Para 244-246]

We do not believe that the concept described by ESMA in paragraphs 244-246 is relevant for repo. According to standard market practice, margin calls (i.e. netting of SFT exposures) are done at a counterparty basis for all bilateral repo trades outstanding between two counterparties. The same is true for CCP margin calls and in the case of tri-party repo, where the exposure is managed by tri-party agents.

Q115. Do you see other ways to calculate the collateral re-use for a given SFT? [Para 256-266]

A possible alternative way to calculate re-use would be option 3 put forward by the FSB, which is not included in ESMA's discussion paper (see further in response to Q117 below).

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

Re-use is a very problematic element and generally with fungible securities it will not be possible to define if collateral received under TTCA (GMRA) has been re-used or not. ESMA should fully respect the exception which has been deliberately provided for in the language of SFTR Article 4, limiting itself to collecting information on the amount of re-use of distinguishable collateral (and taking into account the technical specificities of pools of assets); and should not pre-empt any decisions which may come out of the FSB's ongoing work in this area.

The ICMA ERCC has submitted a detailed response to the FSB's consultation on *Possible Measures of Non-Cash Collateral Re-Use*, in which concerns about this topic are more fully elaborated. A copy of that response submission is annexed to this consultation response and is also available on the ICMA website.[4] ESMA is respectfully requested to treat the content thereof as an integral part of this ICMA ERCC response.

In particular, the ICMA ERCC considers that the tracking of specific, individual collateral securities is not feasible and does not see that there is a necessary justification for such tracking to take place. It is not typically possible to clearly state if collateral has been reused or not, as a result of which any attempt to measure re-use inevitably involves the inclusion of assumptions. Whilst alternative ways to measure re-use can be posited, their outcomes will vary dependent on the assumptions being made – in truth it can only be said for certain that the amount of re-use falls between some minimum and maximum values. Hence great care needs to be taken before drawing conclusions from any attempt to measure re-use and it appears likely that such an exercise could easily incur costs for little or no meaningful benefit. Thus, in case there is to be an attempt to measure re-use the ICMA ERCC believes this should be done with the least incremental cost and it appears that this then favours using the FSB's option 3. Re-use plays an important role in the effective functioning of repo and collateral markets, which lie at the heart of the financial market system, so actions which might unduly inhibit collateral re-use need to be avoided.

Q118. When the information on collateral availability for re-use becomes available? On trade date (T) or at the latest by T+1? [Para 267-268]

[4] The final ICMA ERCC response to the FSB is available here: http://www.icmagroup.org/assets/documents/Regulatory/ERC-Contributions/FSB-re-use-CP_ERCC-response-180416.pdf

Collateral transferred under a GMRA or GMSLA is done so on a title transfer basis, passing outright legal and beneficial ownership from one party to the other (TTCAs- title transfer collateral arrangements). Therefore, any collateral transferred under the GMRA is available for use by the recipient. This information should be available as soon as it is determined that the transaction takes place under a GMRA.

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. [Para 267-268]

As explained above, if the collateral is transferred under the GMRA, legal and beneficial ownership is transferred as a matter of contract. Substantive deviations from the market standard agreement may undermine the legal characterisation of the arrangements as TTCAs and so market participants exercise caution when making amendments in order to mitigate recharacterisation risk.

Comments regarding Section 4.3.6 (Clearing information):

As already explained above, bilateral repo trades that are submitted subsequently to the CCP (and are contingent on CCP-clearing) should be treated in exactly the same way as CCP-cleared trades. No initial report of the contingent trade should be required.

Regarding the rationale for collecting clearing information set out by ESMA in paragraph 269, we would like to stress that the different objectives mentioned can be achieved far more effectively and efficiently by collecting information directly from CCPs. It does not seem to make sense to collect this information through SFTR transaction reporting from counterparties given that all the relevant information is readily available from CCPs. This applies in particular to points (b) (CCP exposure), (c) (market share of clearing members), (d) (collateral types) and (h) (full set of trades) listed by ESMA.

On the proposed clearing related reporting fields more specifically, we would note that these can all be derived directly from CCP reports provided under SFTR. In case a repo is CCP-cleared the CCP becomes the counterparty to the trade and will be identified through the LEI. This information would in turn allow to populate the 'clearing indicator' and the 'CCP' field. The proposed field 'clearing timestamp' should be populated directly by the CCP. Information on 'CCP clearing members' would be also more efficiently provided directly by CCPs. Given that all the requested information will be available, we would suggest that ESMA remove all the clearing related fields from the template in Annex I.

Q120. Do you agree with the rationale for collection of information on the settlement set out in this section? [para 273-275 & 280]

As ESMA points out in paragraph 275, the CSD Regulation contains detailed record-keeping and reporting requirements for CSDs, including on securities financing transactions (see ESMA's final draft ITS on CSD requirements (Regulation 3) submitted to the Commission on 28 September 2015, in particular Annex IV). More specifically, CSDs must maintain for at least ten years all the records and data on all the services that they may provide, including transaction data on collateral management services that involve the processing of SFTs. We believe that the information received through CSDR reporting should be sufficient for regulators to monitor potential financial stability risks posed by CSDs, in particular as they relate to "concentration at the level of settlement". We do not believe that additional information on settlement needs to be collected under the SFTR. This clearly duplicates CSDR

requirements and would also not be in line with the approach proposed by the FSB, as ESMA rightly notes. The CSDR provides a far more appropriate framework to monitor settlement concentrations and dependencies as well as CSD risks more generally, also given that it encompasses all settlement activity, in particular, cash transactions, whereas SFTR would not.

More generally, the underlying ESMA analysis, in particular in paragraph 280, seems to be based on a misperception of the CSDs' role in the settlement process and their risk profile. CSDs are highly regulated and low risk market infrastructures. Unlike CCPs, CSDs do not mutualise the risk of their participants. We do not think that it is correct to argue that they contribute to 'interconnectedness', are channels for 'contagion' and help build up leverage through re-use, at least in the accepted sense of having a significant potential to trigger and transmit stress as a result of activities they have undertaken as principals. CSDs are operational conduits for the processing of transactions. They do indeed 'facilitate' SFTs but this is very different from conducting them for own account. The ancillary banking activities provided by a few CSDs are moreover conservatively managed and strictly controlled, not least by upcoming CSDR requirements. CSDs are subject to significant operational risk, but this is also strictly regulated and addressed through CSDR requirements which aim to ensure the continued provision of CSD services. For more detailed explanations on the CSDs' role in settling SFTs and the related risks, we would refer ESMA to the consultation response by ECSDA which we support in this respect.

Q121. Do you consider that information on settlement supports the identification and monitoring of financial stability risks entailed by SFTs? [para 273-275 & 280]

No, as explained in our response to Q120. There is operational risk in settlement, but this is very different in nature from the principal risk inherent in trading activities and the positions they give rise to. We would also note that if CSDs should engage in SFTs on their own account (ie as a counterparty) they would be subject to SFTR reporting requirements as any other counterparty.

As explained above, we do not think SFTR should duplicate information available in the context of CSDR which provides a far more appropriate framework to monitor the risks listed by ESMA in section 4.3.6.

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

No. As explained in our response to Q120, we do not believe this is necessary. If ESMA insists on the need to collect information on settlement, we suggest that this should be limited to information on the "settlement agent".

Q123. Do you envisage any difficulties with identifying the place of settlement? [para 278]

Yes. We believe that there is no agreed market definition of 'place of settlement'. This field could thus be ambiguous and lead to data inconsistencies. If 'place of settlement' refers to the issuer CSD where the securities are ultimately held, this information is not always readily available to the counterparties and can therefore not be reported. It should however be possible for the TR to derive this information from the ISIN of the securities. The use of the proposed field is further complicated by the fact that in legal terms (i.e. in terms of settlement finality) the place of settlement for a firm will often be its custodian bank, not a CSD.

We therefore suggest to limit the reporting of settlement related information to a new field called "settlement agent", as defined for instance in the EU Settlement Finality Directive. This information is available to firms. If this is supported by ESMA, it should be noted that the 'settlement agent' may be different for the counterparties and can therefore not be used to match reports.

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. [para 279-280]

We understand that the proposed field 'CSD participant or indirect participant' (Field 15 in table 1 of the Annex I) aims at identifying the reporting firm's settlement agent. As mentioned, we would recommend to replace the proposed field by a field that directly asks for the 'settlement agent'. This can be a direct or an indirect CSD participant. The proposed field is confusing given that in many cases there will be a direct and an indirect CSD participant involved in the settlement chain and it might not be clear which entity should be reported.

As regards internalised settlement, in most cases, the reporting firm does not know if its settlement agent internalises settlement and accordingly we do not consider that this should be a reporting requirement under SFTR. Providing this information also does not seem necessary given extensive reporting requirements on internalised settlement which will be introduced by the CSDR. As mentioned above, we do not think that the SFTR should introduce new information flows throughout the settlement chain, with the sole aim of allowing counterparties to report information which can be and is easily obtained from entities further down the chain.

As regards information on "the extent to which different types of SFTs are settled domestically or abroad, or whether settlement takes place in an SSS or is internalised" (paragraph 278), we would again refer to the relevant CSDR reporting and record-keeping requirements which provide this information. We think the CSDR provides the appropriate framework to collect settlement related information and that the SFTR should not aim to duplicate these requirements.

Q125. Will this information be available by the reporting deadline? What are the costs of providing this information? [para 281]

Yes, firms should be able to provide information on the underlying master agreement by the reporting deadline. However, there will be some considerable cost because trade data does not currently include the master agreement under which the trade was executed, because that can be assumed (different pairs of parties will have one repo agreement between them under which they are transacting their new business). The reporting of the applicable annexes and bespoke amendments would be particularly cumbersome to implement without adding any significant value for regulators; and a requirement to report applicable annexes and bespoke amendments would also go beyond corresponding EMIR requirements. We therefore believe that these fields should be removed from the reporting template.

Q126. What other data elements are needed to achieve the required supervisory objectives? Please elaborate. [para 281]

None. As pointed out in our response to Q125, we believe that the proposed fields are already too granular, given the anticipated limited benefits for supervisors.

Q127. Do you agree with the proposed categories of trading methods to be reported by SFT counterparties? [Para 282-283]

We expect that participants will struggle to classify trading venues consistently. There is a significant degree of misunderstanding in the market about what constitutes an automatic trading system. To avoid poor quality reporting, the reporting firms should only be required to provide the MIC of the relevant trading venue and the TR should classify it.

Furthermore, for the sake of consistency with other EU laws and for supervisory purposes, it would be more appropriate to distinguish between repos executed on trading venues as defined by MiFID2/R and those executed outside such venues. This distinction would also avoid ambiguities and issues with the proposed definitions.

Q128. Are there any other methods of trading that are not covered? [Para 282-283]

No.

5. Transparency and availability of data

5.1 Operational standards for data collection

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. [Para 293-295]

No, we support the proposed approach to allow a separate reconciliation process for collateral data. We also agree with ESMA that in the case of collateral pools/ baskets this will have to be performed at portfolio level rather than on a trade by trade basis. However, we also note that the amount of required collateral data is substantial, and that full reconciliation of all these data items (on an individual trade level or at pool level) will be extremely onerous, hence we consider that requirements should only go beyond those in EMIR where there is a clearly justified case for such incremental imposition.

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. [para 302-307]

It would be helpful if ESMA published a precise list of aggregated data to be published.

We believe that the content of the information to be made public by Trade Repositories (TR) should be very carefully considered in order to ensure that no commercially sensitive information is being made public. We very much welcome the Level 1 requirement which states that the “information published under Article 12(1) should not enable the identification of a party to any SFT”. However, we are conscious that other types of data, such as the underlying securities for example, could also lead to sensitive information being made public. We therefore believe that the data that the TR will be required to make public should provide as little granularity as possible, as it is currently the case under EMIR.

We believe that the total cost of publishing more granular data could be significant as this would risk being at the detriment of trading activity and liquidity in the market.

With regards to the FSB report (as mentioned in ESMA's DP), we note that the FSB has not yet decided the level of granularity of the data to be made public. The FSB report very clearly recognizes the need to safeguard the confidentiality of the data reported by national authorities to the FSB. In their report, the FSB states (FSB report page 25, 26) that the treatment of data and the sharing of aggregates with other reporting authorities and, potentially, the general public, will be handled according to three levels of confidentiality (public, restricted, confidential), which will have to be specified by national authorities.

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. [para 302-307]

As a useful reference in relation to possible aggregation of data and format, we would invite ESMA to consult the European repo market survey which ICMA has been publishing on a bi-annual basis since June 2001.

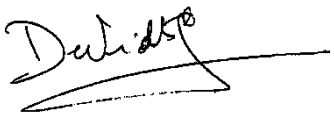
Q138. Do you foresee any issues with publishing aggregate data on a weekly basis? Please elaborate. [para 302-307]

In principle, the higher the frequency of publication of data, the better. In practice, however, high-frequency data publications may add noise to the observations of the market and there may be a trade-off between frequency and breadth of data.

Concluding remarks:

The ICMA ERCC would like to thank ESMA once again for the opportunity to respond to the present consultation and remains at your disposal to discuss any of the points covered in this response.

Yours faithfully,



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