ICMA
European Repo and Collateral Council

ISLA INTERNATIONAL SECURITIES LENDING ASSOCIATION

To:

Steven Maijoor
Chair of the European Securities and Markets Authority
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Sent by email

16 March 2020

**Impact of COVID-19 on SFTR implementation programmes**

Dear Steven,

As you will be aware, members of our respective associations are at an advanced stage of their system builds for the upcoming go-live of SFTR reporting obligations, which are due to apply as of 11 April to banks and investment firms. Both our associations have been heavily involved in this cross-industry effort, running large dedicated working groups for firms active in the repo and securities lending markets respectively to try to resolve uncertainties about the regulatory requirements and to coordinate the implementation work. Among other things, we have produced detailed best practice recommendations to complement the regulatory framework and help ensure consistency across the industry.

Unfortunately, the run-up to the first reporting start date on 11 April has coincided with the acceleration in the proliferation and intensity of the COVID-19 pandemic. The impact on personnel involved in SFTR implementation programmes, compounded by pressures on firms caused by the associated surges in market volatility and volumes, has reached a point where firms believe that their capacity to ensure compliance with the requirements as of 11 April has been critically compromised. In addition, firms realise that this situation will deteriorate further for some months as countries around the world implement unprecedented measures to mitigate the COVID-19 pandemic. This includes legislative measures and constraints imposed by authorities, but also actions by individual firms to respond to the pandemic, protect their employees' health, and ensure core business continuity in extremely stressed market conditions.

**In light of such exceptional circumstances, we would like to ask ESMA to initiate, as a matter of urgency, the procedure for obtaining a formal delay of the SFTR reporting go-live date to an appropriate date that falls well outside the expected critical phase of the pandemic. We suggest that this could be 11 October 2020, the reporting start date for the third phase of SFTR reporting. In the absence of a formal delay, we would ask ESMA, at a minimum, to consider equivalent measures that would provide forbearance and sufficient reassurance for firms that they are not expected by ESMA and their respective NCA to ensure strict compliance with SFTR reporting obligations for an appropriate period of time following the legal reporting start date. Again, the October start date would seem to be a reasonable reference point.**

On 11 March, ESMA issued a helpful statement in relation to the COVID-19 impacts, encouraging firms to activate contingency measures and business continuity planning, which many of our members have already done. In the statement, ESMA stresses that they are "prepared to use its powers to ensure the orderly functioning of markets, financial stability and investor protection." We believe that a delay to the SFTR reporting go-live would be warranted from this perspective. Given the ongoing uncertainty, extreme market volatility observed and pressure on firms to ensure business continuity, rolling out a large-scale implementation project as the SFTR implementation would introduce material risks to financial stability.

In support of this request, we have asked members to provide actual examples of challenges that COVID-19 related measures pose to SFTR implementation projects. We attach these examples, in the hope that this is helpful background for your assessment of the situation and in determining appropriate measures to be taken.

We thank you in advance for your consideration and would be pleased to further elaborate, as needed. Given the imminent SFTR go-live date, and the pressing need for firms to plan accordingly, swift guidance on this matter would be greatly appreciated.

Yours sincerely,

Martin Scheck
Chief Executive Officer
International Capital Market Association

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John Berrigan
Director-General, DG FISMA, European Commission

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## ANNEX I: Impacts of COVID-19 on SFTR implementation programmes

1. Impact on human resources:

- **Sick leave:** As the COVID-19 epidemic continues to spread, an increasing number of staff are already, or are expected to be on sick leave over the coming weeks, in line with official guidance and rules relating to self-isolation. This means that significant parts of the workforce will be unable to operate as normal, leading to delays in the implementation of any change, including SFTR programmes. In the short term, it is not possible for firms to replace the very specific expertise and experience required.
- **Childcare:** Schools and other childcare facilities across Europe are closing, meaning that parents with young children --- including many bank personnel --- will not be able to work (full-time), even remotely, adding to delays in the implementation of any change, including SFTR programmes. Some EU governments are already granting special paid leave to those affected by school closures, materially impacting the SFTR implementation programmes of firms with significant numbers of staff in those countries.

2. Business Continuity Planning (BCP):

- **On-site restrictions:** BCP plans invoked in many firms across Europe and applied across all relevant office locations are prohibiting meetings and movement between buildings and floors. Whilst this is standard BCP practice, it nevertheless impacts the ability to effectively manage implementation and testing issues.
- **Working from home:** Whilst most, if not all, firms have provision for "working from home" in their BCPs this was not expected to extend to 50-100% of the workforce, as is already the case in many firms today, particularly in the most affected areas. The reliance on remote online access is resulting in serious bandwidth and network constraints, restricting communication with colleagues, so further delaying the implementation of any change programme.
- **Disaster recovery sites/ offsites**: Given the nature of the COVID-19 infection rates, firms are often not able to efficiently use offsite locations due to the concentration of personnel that this would create and an increased chance of spreading the infection.

3. Market volatility

- **Extreme market volumes and volatility:** The challenges described above are significantly aggravated by the extreme levels of trading volume and market volatility that firms are experiencing during the COVID-19 crisis. This has had two key consequences:
    - **"Change to Run":** One consequence of firms' BCPs is to divert staff from "Change" teams working on infrastructure change such as implementing SFTR to fill gaps in "Run" teams focused on running the day-to-day business of the institution, including settlement and fails management, to ensure core business continuity and client support. The impact of the loss of personnel is amplified by the scale of SFTR.
    - **Technology change freezes:** In addition, during periods of stress and market volatility as part of BCPs, many firms' technology divisions implement formal change freezes in order to prevent systems under pressure from potentially failing due to implemented changes.

SFTR reporting necessitates a large number of changes to be implemented by technology teams and these changes are requiring very senior (CIO/ CTO) “sign-offs” to seek exemption from the freezes that are currently in place. And the process of seeking such sign-offs and the additional testing involved is itself delaying the process significantly.

4. Impact on third-party service-providers:

- **Reliance on service-providers:** In the context of SFTR, there is a high reliance on market infrastructures (trading venues, CCPs, tri-party agents and agent lenders), but also trade repositories and third-party service-providers, which all face very similar constraints to reporting firms. This is seriously inhibiting end-to-end testing capability which has already been constrained by the delays in the delivery of the regulatory guidance and the existence of important open issues that continue to be unresolved.
- **Market conditions:** Heightened market volatility and volumes create similar challenges for service-providers and will lead to prioritization and resources being diverted away from SFTR developments and testing to essential support functions for clients to ensure business continuity of their existing business and ongoing compliance with active regulatory obligations, e.g. EMIR reporting.
- **Onboarding challenges:** Administratively, there is an extended concern on how client onboarding will be achieved in an environment that requires physical signatures, suffers from lack of printing and scanning tools as well as courier, parcel, and express mail facilities for those working from home.

5. Challenges for non-EU firms in scope of SFTR reporting:

- **Travel bans:** Besides all the other constraints discussed above, given the global nature of COVID-19, non-EU firms are particularly impacted by travel restrictions and bans (both external and internal). These pose a significant additional challenge, as they inhibit effective collaboration and prevent the relevant experts from travelling to assist on-site with developing, testing and implementing the operational framework. Within the short timeframe until 11 April, it is impossible to adequately replace the relevant experience and knowledge base through local staff. This will remain a significant challenge post-go-live and would likely lead to delays in investigating and correcting validation and reconciliation breaks.

**ANNEX II:**

**About ICMA and the ERCC:**

The International Capital Market Association (ICMA) has over 580 members located in 62 countries worldwide drawn from both the sell side and buy-side of the market. It is primarily a pan-European association but with strong links and a growing number of members outside Europe. ICMA market conventions and standards have been the pillars of the international debt market for almost 50 years, providing the framework of rules governing market practice which facilitate the orderly functioning of the market.

Since the early 1990's, ICMA has played a significant role in promoting the interests and activities of the international repo market, and of the product itself. The European Repo and Collateral Council (ERCC) was established by the ICMA in December 1999, to represent the cross-border repo and collateral markets in Europe and 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.

**About ISLA:**

The International Securities Lending Association (ISLA) is a leading industry association, representing the common interests of securities lending and financing market participants across Europe, Middle East and Africa. Its geographically diverse membership of over 160 firms, includes institutional investors, asset managers, custodial banks, prime brokers and service providers. Working closely with the global industry as well as regulators and policymakers, ISLA advocates the importance of securities lending to the broader financial services industry. ISLA supports the development of a safe and efficient framework for the industry, by playing a pivotal role in promoting market best practice, amongst other things. ISLA sponsors the Global Market Securities Lending Agreement (GMSLA) and the annual enforceability review in over 20 jurisdictions globally. Through member working groups, industry guidance, consultations and first-class events and education, ISLA helps to steer the direction of the industry and is one of its most influential voices on the European and global stage.