Frankfurt am Main,
30 November 2016

BVI`s response to the ESMA Consultation Paper Draft RTS and ITS under SFTR and amendments to related EMIR RTS (ESMA/2016/1409)

BVI[1] would like to present its views on the ESMA consultation paper draft RTS and ITS under the SFTR.

We strongly encourage ESMA to develop and to leverage the technical standards on pre-existing infrastructure, operational processes and formats, especially EMIR, in order to reduce the operational and compliance burden for the reporting counterparties (e.g. UCITS/AIF management companies). ESMA should ensure that the already implemented EMIR reporting practice should be also re-used for SFTR reporting. In this context, we would like to recall that recently the EU-Commission committed in the Call for Evidence for an EU regulatory framework for financial services to reduce duplication and excessive reporting requirements and announced to undertake a comprehensive review how burdens can be reduced, consolidated and streamlined, without compromising regulatory objectives[2].

We strongly support the work started by ESMA to harmonize data content messages, formats and standards on the basis of ISO 20022 for data collection and aggregation on securities financing transactions that are relevant for financial stability monitoring. The proposed content of the data fields for securities financing transactions could be implemented and be reported by the German management companies to a trade repository (TR). However, the implementation of such data standards and processes in the financial industry should be carefully calibrated and not be rushed. In this context, the introduction of the EMIR reporting obligation should not be used as a model for the regulators as the implementation of this reporting regime was very complex and burdensome due to time constraints and lack of legal and operational certainty.

German investment fund management companies do not currently clear SFT trades with a CCP. Our members agree with the proposed structure of the SFT reports. We recommend ESMA to clarify the term “broker” as the proposed definitions are not consistent. Furthermore, ESMA needs to ensure that all SFT trade repositories use the same reporting logic as required by the technical standards.

The service agreements between the reporting entities and the TRs should only be acceptable for EU users if they provide for use of the laws of EU Member States. It is not acceptable that EU market participants are required to settle legal claims against a TR required by EU regulation in front of a foreign court and foreign law.

[1] BVI represents the interests of the German investment fund and asset management industry. Its 98 members manage assets of some EUR 2.8 trillion in UCITS, AIFs and discretionary mandates. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the assets of 50 million private clients in over 21 million households. BVI’s ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.
[2] http://ec.europa.eu/finance/general-policy/docs/general/161123-staff-working-document_en.pdf

BVI
Bundesverband Investment und Asset Management e.V.

Contact
Phone +49 69 15 40 90 0
www.bvi.de

BVI Berlin
Unter den Linden 42
10117 Berlin

BVI Brussels
Rue du Trône 14–16
1000 Bruxelles

BVI Frankfurt
Bockenheimer Anlage 15
60322 Frankfurt am Main

Executive Board
Thomas Richter CEO
Rudolf Siebel MD

We would like to make the following specific comments:

Q1: Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.
Q 2: Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.
Q3: Do you agree with the above proposals? What else needs to be considered? What are the potential costs and benefits of those? Please elaborate.

We have no comments.

Q 4: Do you consider that the currently used classification of counterparties is granular enough to provide information on the classification of the relevant counterparties? Alternatively, would the SNA be a proper way to classify them? Please elaborate.

The classification of counterparties as described in Article 3 para 3 of regulation 2015/2365 is sufficient enough to provide information on the classification of the relevant counterparties. Such a SFT classification system is aligned with the EMIR categorization system and should be used by the trade repositories (TR) in order to reduce the implementation burden by the reporting entities when they access a SFT-TR.

We strongly reject the suggested alternative classification system based on the standards of the United Nations System of National Accounts (SNA 2008). The introduction of such a new classification system will enhance the implementation burden for the reporting counterparties without any additional value for the regulators to monitor systemic risk in the SFT market. We consider the classification system provided for in the level 1 text as sufficient in order to analyse and monitor system risk.

Q 5: Do you foresee issues in identifying the counterparties of an SFT trade following the above-mentioned definitions?
Q 6: Are there cases for which these definitions leave room for interpretation? Please elaborate.

We agree with the suggestions in para 94 to 97. The definition of a CCP should be aligned with the EMIR regulation. However, paragraphs 92 and 93 do not precisely identify the counterparty of an SFT trade. The term “intermediary” is not precise enough and the wording “principal basis” might be applicable with some jurisdictions of the EU but not with all of them.

The term “broker” is described differently in the consultation paper. According to para 133 the broker does not become a counterparty when “acting on its own account” while according to para 135 “becomes a counterparty to the trade”. In para 137 ESMA suggests another definition of a broker (brokers acting as principal to the transaction and matched principal brokers) which is not mentioned in para 93-97. We encourage ESMA to align the definition of the term “broker” within the technical standards in order to enhance the legal certainty for the reporting entities. From a buy side perspective, in such function a broker does not act on its own account.

We strongly encourage ESMA to clarify that management companies and their respective investment funds (UCITS/AIF) should be identified in the same reporting logic as it is currently the case in the EMIR reporting. The fund (established in accordance with Contract Law) is the counterparty to the SFT

and should be identified with the LEI (please see para 110). However, contrary to this approach, ESMA suggests in para 137 that the UCITS/AIF management company should be determined as an additional counterparty in respect to a bilateral repo with a broker acting on its own account (p. 47). If the Competent Authorities need additional information of the management company, such information is already stored and available within the data set belonging to the LEI of the fund. Additionally, the UCITS/AIF management company acting on behalf of the fund could also be identified with the LEI.

In such a context, the definition in para 93 could be interpreted that UCITS/AIF management companies itself act as a broker which again is contrary to the description in para 133. The UCITS/AIF management company does never act on its own account. In order to avoid any misunderstanding, ESMA needs to clarify that management companies should not be considered as a broker.

Q 7: Based on your experience, do you consider that the conditions detailed in paragraph 105 hold for CCP-cleared SFTs? Please elaborate.

As mentioned above, our members do not use CCP-cleared SFTs. The description in para 106 could be considered as a new SFT after “compression”. The new position could be reported as a new SFT replacing the former SFT.

Q 8: In the case of CCP-cleared SFT trades, is it always possible to assign and report collateral valuation and margin to separately concluded SFTs? If not, would this impair the possibility for the counterparties to comply with the reporting obligation under Article 4 SFTR? Please provide concrete examples.

Highly regulated investment funds do not use a CCP for SFT trades. Collateral can only be reported on position level independently if the SFT trade is cleared or not. Under a standard master agreement, the “netting set” rather than the individual transaction needs to be collateralized.

Q 9: Would the suggested data elements allow for accurate reporting at individual SFT level and CCP-cleared position level? In line with approach described above?

We strongly share ESMA`s views that the implementation of a new action type on “position component” should be aligned with the EMIR reporting approach as stated in para 108.

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

The data on collateral should be reported on the level of the “netting sets”. The term “netting set” is stated in the draft EMIR regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty.[3] Therefore, the wording should be aligned.

[3] http://ec.europa.eu/finance/financial-markets/docs/derivatives/161004-delegated-act_en.pdf

Q 11: Do you agree with the proposed report types and action types? Do you agree with the proposed combinations between action types and report types? What other aspects need to be considered? Please elaborate.

We do not agree with proposals related to the report types and the action types. As already mentioned above, ESMA should align as much as possible the EMIR reporting with the SFTR reporting. The financial industry has already implemented the EMIR reporting which should also be applied to SFTR reporting. Therefore, ESMA should remain as close as possible to the action types outlined in table 2, field 58 “Action type” of the Implementing Regulation (EU) No 1247/2012.

We would like to make the following comments related to proposed action types:

- The action type “modification of business terms” and “other modifications” should be aligned and to be formed to only one action type „modification“. EMIR has also only one action type for modifying data sets – “M = Modify”.
  In terms of further harmonisation this discrepancy between both reporting regimes increases the technical complexity for all reporting entities and also for the regulators. From a technical point of view it is a huge effort to implement a split into the current methods which distinguishes between two different modification types.

- We propose to add a new action type called “valuation update” as used in the EMIR reporting logic. The current proposal does not contain an action type for the valuation of the collateral used in SFTs. It states that instead of a separate action type the modification action types should be used for the valuation of contracts, whereas the substitution of collateral components should be reported as “Modification of business terms” and the daily valuation as “Other modification” (see no. 123 of the consultation paper). This approach deviates from the EMIR reporting logic where a separate action type for the valuation of collaterals has been introduced and implemented by the financial industry. The separate handling of SFTR and EMIR will prohibit the reuse of the current reporting infrastructure and therefore will not meet the requirements in the level 1 text to align EMIR with SFTR reporting.

- Alignment of action type “Cancellation”: The consultation paper outlines in table 1 that action type “Cancellation” should be used in case “a previously reported SFT report was incorrectly submitted and reported in error.” The EMIR field “Action type” (common data table field 58) has an action type which is called “E = Error” and covers the same cases as action type “Cancellation” under SFTR. In terms of consistency it makes sense to align the wording of those two action types to avoid misunderstandings. Especially, the fact that EMIR has an additional action type “C = Cancel” could lead to misinterpretations for market participants.

Q 12: The modifications of which data elements should be reported under action type “Modification of business terms”? Please justify your proposals.

Please see our answer to question 11. We propose to align the action type “modification of business terms” and “other modifications to only one type called „modification“. ESMA should remain as close as possible to the EMIR action types.

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

Please see our answer to the questions 11 and 12.

Q 14: Do you agree with the revised proposal to use the terms "collateral taker" and "collateral giver" for all types of SFTs?

We agree with the approach. The explanation gives an excellent description for all market participants.

Q 15: Are the proposed rules for determination of the collateral taker and collateral giver clear and comprehensive?

Yes, we agree.

Q 16: Are you aware of any other bilateral repo trade scenario? Are there any other actors missing which are not a broker or counterparty? Please elaborate.

Please see our answer to the questions 5 and 6. Our members use generally repo scenario 1.

The definition of the term "broker" is still unclear and we encourage ESMA to clarify the term "broker". According to our understanding of the consultation paper, it seems to us that anybody who has some kind of a relationship to a SFT could be considered as a broker without a CCP or CSD. The broker could be a counterparty (para 135) or not (para 133). The broker could be an intermediary acting on behalf of a customer (para 93) or not (para 135). The broker could also be a principal or a "matched principal broker".

Furthermore, we agree with ESMA`s assessment in para 137 that the investment fund should be identified with the LEI. This reporting scenario is aligned with EMIR. However, ESMA needs to clarify that the involvement of an investment fund management company should not be considered as brokerage. The management company acts neither as broker nor as intermediary, even if the asset management company of a fund has outsourced the portfolio management to a third party. In the latter case, the insourcing company should not be identified as a "broker" and should not be included as counterparty in the reporting.

Q 17: 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.

The list of possible master agreements should also include the German master agreement for Repurchase Agreements ("Rahmenvertrag für Wertpapierpensionsgeschäfte"). The service agreements between the reporting entities and the TRs should only be acceptable for EU users if they provide for use of the laws of EU Member States. It is not acceptable that EU market participants are required to settle legal claims against a TR required by EU regulation in front of a foreign court and foreign law.

Q 18: Are the most relevant ways to conclude a repo trade covered by the above scenarios? Are the assumptions correct? Please elaborate.

Currently, our members do not use a CCP for repo trades. However, ESMA needs to further clarify the repo scenario 5 involving the asset manager (para 146). We do not understand the cases "of sponsored access to a CCP where asset managers are sponsored by a clearing member" or "the direct clearing for the buy side customers where there could be another clearer that act as a clearing agent for the buy side customer".

In the CCP-clearing context of interest rate swaps and credit default derivatives involving investment fund management companies, ESMA has proposed to extend the phase-in approach for category (3) until 21 June 2019. Our members and their respective investment funds (UCITS/AIF) are mainly classified in category (3). The postponement of this deadline has been made due to the fact that investment fund with a limit volume of clearing activity has difficulties to find a clearing member. Therefore, we question if repo scenario 5 presented in para 146 is practical.

Furthermore, ESMA needs to clarify in para 147 the function of a broker or a tri-party agent in the central clearing scenarios. If it refers to the tri-party collateral management, we do not see any reason why the tri-party agent should be considered in the report.

As already mentioned above, ESMA needs to clarify the term "broker". The term "agent" (respectively "agent capacity") used in repo scenario 5 has different meanings if translated from English into other European languages. One translation refers to a "proxy". The other one means a broker (charging a brokerage fee from its client for entering into the transaction ordered by its client). In one case the agent does not become a counterparty, in the other case it becomes a counterparty. If it is preferred using terms with a origin in the UK for provsions to be applied across Europe, it should be further clarified for market participants from outside the UK, what is meant where this term is being used. Otherwise it is likely that confusion occurs and reports are made in a heterogenic manner.

Q 19: Are the most relevant ways to conclude a securities lending transaction covered by the above scenarios? Are the assumptions correct? Please elaborate.

Currently, our members do not use a CCP for securities lending transactions. ESMA needs to clarify the following:

- **Securities lending scenario 1**

The description of securities lending scenario 1 introduces the following "participants":

- Intermediary
- Principal lender
- Beneficial owner
- Market participant
- Agent lender, and
- CSD participant

However, it is not explained who is captured by which term. Furthermore, it is unclear, why scenario 1 refers to a beneficial owner. A beneficial owner only has beneficial, but not juridical ownership in the securities to be lent. Without juridical ownership, it would not be entitled to transfer the relevant securities to the borrower.

- **Securities lending scenario 3 and 4**

It is unclear why in one case the "lending agent" shall be considered as a counterparty while in the other case it shall not be considered as counterparty. ESMA mention in para 158 that the lending agent acts as "principal". Furthermore, scenario 4 should clarify the meaning of the "lending agent".

Q 20: Would it be possible to link the 8 trade reports to constitute the "principal clearing model" picture? If yes, would the method for linking proposed in section 4.3.4 be suitable?

We do not understand the term "principal clearing model" as described in para 143. Currently, our members are not a clearing member and do not tend to act as a clearing member in respect to repo and lending trades with the involvement of a CCP. If the RTS intend to provide repo and lending scenarios with a CCP ESMA should clearly describe the involvements of all relevant market participants.

Q 21: In the case of securities lending transactions are there any other actors missing?

We do not understand the term "actors". ESMA should align as much as possible the SFTR reporting with EMIR and should avoid introducing further new market participants.

Q 22: What potential issues do reporting counterparties face regarding the reporting of the market value of the securities on loan or borrowed?

If ESMA or the NCAs intend to supervise how far default risks are mitigated by collateral posted, there might be a delta where securities lent are considered with their market value after the ex-day. In this scenario the market value would not reflect the dividend to be paid by the issuer while collaterals also secure the future claim for manufactured dividends.

Q 23: Do you agree with the proposal with regards to reporting of uncollateralised SFTs? Please elaborate.

Yes, we agree.

Q 24: Do you agree with the proposal with regards to reporting of SFTs involving commodities? Please elaborate.

No. Contrary to para 168 buy- and sell back agreements are generally governed by a master agreement (both legs).

Q 25: Are there any obstacles to daily position reporting by margin lending counterparties? Do prime brokers provide information to their clients about intraday margin loans?

We agree with the description of the margin lending and the included counterparties. ESMA needs to clarify that only prime broker provide such kind of transactions to the market participants.

Q 26: Which kinds of guarantees or indemnifications exist in relationship to prime brokerage margin lending? Are there other parties possibly involved in a margin loan? Please provide an example.

We have no comments.

Q 27: What types of loans or activities, other than prime brokerage margin lending, would be captured in the scope of margin lending under the SFTR definition? Please provide details on their nature, their objective(s), the execution and settlement, the parties involved, the existing reporting regimes that these may already be subject to, as well as any other information that you deem relevant for the purpose of reporting.

Please see our answer to question Q25. Only prime broker should be classified as counterparties of a margin lending transaction.

Q 28: Are there any obstacles to the collection of data on the amount of margin financing available and outstanding margin balance? Are there any alternatives to collect data on "Free credit balances", as required by the FSB? Please provide an example.
Q 29: Are there any obstacles to the reporting of (positive or negative) cash balances in the context of margin lending?
Q 30: Are data elements on margin financing available and outstanding balances relevant for margin loans outside the prime brokerage context? Please provide examples.

We have no comments.

Q 31: Is the short market value reported to clients at the end of the day part of the position snapshot? What is the typical format and level of granularity included in the information communicated to clients?

"Short selling" is not a "proxy" for securities lending. Borrowers of a securities lending transaction have different reasons to execute such a trade. Some market participants want to obtain a level of participation in a company for a squeeze-out, thereby having eligible securities collateral or bridging settlement delays. A has purchased a stock from B with a settlement period of 2 days and sold the stock to C with a settlement period of one day. B gets in a delay with delivery. A borrows stock to fulfill its contractual obligation towards C.

Q 32: Is the data element on short market value relevant for margin loans outside the prime brokerage context? Please provide examples.

No, this is not relevant.

Q 33: Do you agree with the proposed structure of the SFT reports? If not, how you would consider that the reporting of reuse and margin should be organised? Please provide specific examples.

In general, we agree with the proposed structure of the SFT reports. However, ESMA should align as much as possible the SFT reporting obligation with the EMIR reporting infrastructure. All data fields and descriptions which are identical under both reporting obligations should aligned. ESMA should strongly avoid labeling data fields differently which follow under EMIR and SFTR the same reporting and content logic.

ESMA needs to ensure that all authorized and registered SFTR trade repositories use the same data field and content descriptions agreed in the RTS in order to avoid that TRs use their own data field definitions which could then vary between the TRs. The reporting entities (e.g. UCITS/AIF management companies) have to adhere to the reporting requirements laid down by the TRs. Otherwise, the cost of implementation for the reporting entities will increase and the regulators have also problems to aggregate, analyse and monitor the SFTR risk.

Q 34: What are the potential costs and benefits of reporting re-use information as a separate report and not as part of the counterparty data? Please elaborate.

It is currently difficult to provide an answer until it is clarified in more detail (as provided under para. 291 and 292) what the description of “re-use” mean.

We share ESMA (para 296) view that UCITS and other regulated investment fund are generally not allowed to re-use and should therefore be excluded from the reporting of such a data field.

Q 35: What are the potential costs and benefits of reporting margin information as a separate report and not as part of the counterparty data? Please elaborate.
Q 36: Are there any fields which in your view should be moved from the Counterparty to the Trade-related data or vice-versa? If so, please specify the fields clarifying why they should be moved.
Q 37: Is Tri-party agent expected to be the same for both counterparties in all cases? If not, please specify in which circumstances it can be different

We have no comments.

Q 38: Do you agree with the proposed fields included in the attached Excel document? Please provide your comments in the specified column.

Referring to section 4.3.2, we believe that there could be a risk of misinterpretation. The text refers to “Branches”. Branches of companies or investment firms do not have LEI for branches. We would

therefore urge ESMA to adapt its qualification and to use at the most granular level “subsidiaries” to designate corporate subject to an LEI.

Furthermore, approximately 61% of the fields proposed in the SFTR consultation paper are new fields which cannot be reused from the EMIR infrastructure. Only 20% of the proposed fields can be reused from the EMIR infrastructure and 19% are existent within EMIR, but have different closed list, a different format or a different field name. The fact that 61% of the fields under SFTR are completely new demonstrates that the requested granularity of data under SFTR is much higher than under EMIR. A large number of newly proposed fields are introduced to gather more information than the reporting entities are required to deliver under EMIR. ESMA needs to review whether the proposed granularity of data is necessary for the reporting under SFTR.

Q 39: Do you agree with the proposal to identify the country of the branches with ISO country codes?

Yes, we agree.

Q 40: Do you agree with the proposed approach with regards to the reporting of information on beneficiaries? If not, what other aspects need to be considered? Please elaborate.

In general, we agree. Please see our answer to question 5 and 6. We insist on the need to maintain the LEI for umbrella funds at the level of the trading entity or the sub-fund according to the nature of the counterparties and in line with the reporting already in place for EMIR. As UCITSs/ AIFs are financial counterparties and by definition also beneficiaries, ESMA needs to ensure that is not necessary to fill in the fields related to the beneficiary, as they would be redundant.

Q 41: Would exempting CCPs from reporting the Report Tracking Number field would reduce the reporting burden on the industry.

We have no comments.

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

According to our understanding, the linking of SFT trades with a UTI should only occur in the case of trading and clearing of such trades. Currently, our members do not trade or clear via a CCP SFT trades. Therefore, we cannot make an assessment of the implementation costs. However, we fear that such linking of SFT trades with a UTI is a complex task and should significantly enhance the implementation costs for the reporting entities (e.g. UCITS/AIF management companies).

Q 43: Could you please provide views on whether you would prefer Alternative 1 (prior-UTI) over Alternative 2 (relative referencing solution)? Please provide relative costs of implementing both proposals.

ESMA should bear in mind that it might hamper market participants to clear transactions if reporting requirements are to extensive with respect to cleared transactions.

Q 44: Do you agree with the above rules for determining the entity responsible for the generation and transmission of the UTI? If not what other aspects should be taken into account? Please elaborate.

We agree with the proposal that clear rules should be established determining the entity responsible for the generation and the transmission of the UTI. However, as already mentioned, ESMA should align as much as possible also the general rules for generation and transmission of an UTI under EMIR with the SFTR reporting.

According to the ESMA proposal, the buy-side needs to generate and transmit the UTI. However, our members are of the view that the buy-side should be obliged to generate the UTI. This obligation should be on the sell-side meaning credit institutions and investment firms (e.g. brokers/dealers). The UTI should be communicated in a standardized way instead of requesting its counterparty to obtain the UTI from a website; or communicating it via separate e-mail.

Furthermore some provisions should foresee a regime in case of delays in the production of UTI where a counterparty fail to provide identifiers on timely manner.

If the provider is unable to communicate the UTI within the reporting deadlines, the receiver should be allowed to generate its own UTI in order to report. The TR should allow this provisional UTI to subsequently be amended once it is agreed with the counterparty.

Q 45: Do you agree with the logic and framework for reporting of margins for CCP-cleared SFTs? What other aspects should be taken into account? Please elaborate.

We have no comments.

Q 46: Would you agree with the definition of terms? If not, please explain.

We do not agree with the usage of IFRS 13 (para 247). IFRS is an accounting standard which is not applicable to all market participants. German investment funds do not report under IFRS. In order to comply with the principle of proportionality, ESMA should replace the reference to IFRS by a mark-to-market valuation.

In para. 248 ESMA should clarify that the term “collateral pool” may also include the arrangement of pledging a securities account.

Related to the term “collateral portfolio” we would like to highlight that this is also used under EMIR. However, under EMIR, “collateral portfolio” means that the collateral is calculated on the basis of net positions resulting from a set of contracts, rather than per trade. Therefore, the definition in no 248 might be misleading in the EMIR context. We would like to encourage ESMA to review the consistency between EMIR and SFTR and amend/expand the definition accordingly.

Q 47: Are the cases for which collateral can be reported on trade level accurately described? If not, please explain.

ESMA should also take into considerations the content of the standard master agreements applicable to repo trades. The cash forming the “cash leg” of a repo trade is a purchase price. All relevant master agreements do neither consider the purchase price nor the securities subject to the purchase and repurchase as collateral. Deeming it to be collateral might be right in an economic view but not a legal one. Only the delta arising from market movements with respect to the securities sold under a repo trade compared to the purchase price paid is subject to the exchange of collateral. The netting set of such deltas arising from the repo trades is subject to an agreement for collateralization.

In order to avoid any misunderstanding: Without a change in the market value of the security sold (during the term of the repo trade) there would not be any collateralization at all which could be reported by market participants.

Para. 257 points out that the securities are to be reported as collateral which would also be wrong as they are objects of purchase. All master agreements do not consider the securities sold as collateral. Such understanding would be in conflict with the legal standards agreed between market participants.

Q 48: In addition to the exceptions listed above, when would the collateral for a repo trade that does not involve a collateral basket not be known by the reporting deadline of end of T + 1?
Q 49: Could the counterparties to a CCP-cleared cash rebate securities lending trade report an estimated value for the cash collateral in the markets in which the CCP calculates the initial cash value on the intended settlement date? If not, please explain.

We have no comments.

Q 50: Are the cases for which collateral would be reported on the basis of the net exposure accurately described? If not, please explain.

We know that master netting agreements are discussed. However, even if they are agreed, they are not often used.

Q 51: Is the understanding of ESMA correct that CCP-cleared trades are excluded from the calculation of net exposures between two counterparties? If not, please explain.

After acceptance for clearing, there should not be any trade between the initial parties anymore.

Q 52: Is the assumption correct that the counterparties can report the assets available for collateralisation in the collateral portfolio for margin lending with the balance of the outstanding loan? If not, please explain.
Q 53: Are you aware of any scenarios that would require at the end of day the reporting of cash not only as principal amount, but also as cash collateral for repos? If yes, please describe.

We have no comments.

Q 54: Would you foresee any specific challenges in implementing the proposed logic for linking? If yes, please explain.

Yes. At times where there is not more than one transaction to be reported, net would be gross. That means, at such occasions it would be possible to link the transaction to the collateral. However, it will be difficult if not impossible to switch between reporting methods based on the daily netting set. ESMA needs to clarify that the method of referring to the master agreement rather than a particular ISIN shall also apply where there is only one transaction between the parties which is governed by a master agreement.

Furthermore, ESMA should also use the EMIR practice for linking for the SFTR reporting.

Q 55: In which case would counterparties need to provide a bilaterally agreed unique code to for linking trades to collateral? If yes, please explain.

According to ESMA's description in all cases where there is no abbreviation provided for a master agreement type. ESMA should consider to simplify by considering a "yes" or "no" (boolean value) for completing the field "master agreement" rather than the abbreviation of a specific master agreement type. Such would decrease the number of potential mismatches

Q 56: Is there a case where more than one bespoke bilateral agreement is concluded between two counterparties?

We have no comments.

Q 57: Is it possible, for a pair of counterparties to have more than one master agreement or more than one bespoke agreement per SFT type? In these cases, please specify, how these agreements are identified between the counterparties? Please provide examples.

Yes, if fund management companies have entered into a master agreement acting for the joint account of investors of an investment fund established in accordance with contract law. In such case there will be a separate master agreement between the same counterparties with regard to each investment funds managed. However, as ESMA proposes that counterparties should be identified with the LEI, this should not cause any problems as the LEI issued for the fund would be used.

Q 58: How costly would it be for your firm to report individual securities? If possible, please provide a quantitative estimation of the costs.
Q 59: Would the reporting of outstanding balances by asset class facilitate reporting? How costly would it be for your firm to develop and implement such a reporting? If possible, please provide a quantitative estimation.
Q 60: Are there other obstacles to collecting position-level data on funding sources for each prime broker? If this is the case, please provide an example, and whether there is a viable alternative.
Q 61: What type of information or guidance would be required in order for funding sources to be reported consistently across all reporting counterparties?
Q 62: Can data elements on funding sources be reported for margin loans outside the prime brokerage context? Please provide examples.

Q 63: How are portfolio leverage ratios calculated? Please provide an example of the formulas typically used.

We have no comments.

Q 64: What are the potential costs of providing the re-use data as outlined in this section? Are there other options to link collateral that is re-used to a given SFT or counterparty? Please document the potential issues. Please elaborate.

The scope of collateral re-use reporting needs further clarification. That depends on the cases of re-use respectively the definition of re-use. If maintaining collateral received in a bank account is deemed to be re-use, it is likely to be complex to implement the requirement.

We suggest clarifying also who is responsible for the reporting of reuse of collateral. It is unclear whether it should be provided only by the reporting counterparty as the collateral taker or by both counterparties. Article 4 of the draft RTS is ambiguous on this point.

Finally, where the collateral re-use would be reported independently of the underlying trades and the counterparty receiving the financial instrument as collateral, it should be noted this would result in an excessive and unnecessary burden for UCITS/AIFs where the re-use of a financial instrument is fully excluded by European or national provisions.

Q 65: Would it be easier to report collateral re-use in a separate message as proposed or, it will be better repeating the information as part of the counterparty data?

We support the reporting of the collateral re-use in a separate message.

Q 66: Would the effort of reporting re-use on a weekly or monthly basis reduce significantly the costs?

Yes, this would reduce significantly the costs.

Q 67: Are there cash re-investment programmes for agent lenders acting as principal?

We have no comments.

Q 68: Do you agree that the term type and the way maturity is measured (e.g. weighted average maturity) are appropriate elements for the purpose of monitoring potential liquidity risks from maturity mismatch between the securities loan and the reinvestment of cash collateral? Are there other elements you believe ESMA should consider collecting? Do you see any obstacles to the reporting of these elements, or their analysis? Please explain.

With respect to liquidity, it makes a difference whether securities are lent on fix terms or if those loans can be terminated at any time.

Q 69: What is the methodology your firm uses to compute the weighted-average life and maturity of cash collateral portfolios? Do you expect this methodology to vary significantly across firms?

We do not understand the calculation of the weighted-average life. Cash collateral received is booked into an account maintained at a bank. As soon as collateral received is not required anymore and called back by the margin provider, the bank instructs to transfer the respective amount back to the collateral provider.

Q 70: Do you agree with the proposed approach? What other aspects need to be taken into account? Pleas elaborate.

Generally yes. However, ESMA should also consider the following points:

- All known master agreements do neither consider the purchase price nor the securities subject to the purchase and repurchase as collateral. Deeming it to be collateral might be right in an economic view but not a legal one. Only the delta arising from market movements with respect to the securities sold under a repo trade compared to the purchase price paid is subject to the exchange of collateral. The netting set of such deltas arising from the repo trades is subject to an agreement for collateralization. In order to avoid any misunderstanding: Without a change in the market value of the security sold (during the term of the repo trade) there would not be any collateralization at all which could be reported by market participants. The assumptions expressed in para. 257, which are also underlying here, are wrong. Therefore, it is very likely that - if considered that way in the RTS - there will be confusion and reports are likely to mismatch.

- The buyer of the securities subject to the purchase and repurchase is not restricted in the case of the securities purchased. If ESMA would consider the object of purpose as collateral, there will be two possible consequences:
  (i) market participants will report “availability of re-use” at all times without exemption or
  (ii) there will be confusion in the market place arising from the fact that the object of the transaction is not considered in the master agreements as collateral which may lead to the result that in the case of re-use, “real collateral” is subject to other rules than “assets which are deemed to by collateral by regulation”.

Q 71: Do you agree with the proposed approach? Please elaborate.

We have no comments.

Q 72: Do you agree with the proposed approach with regards to reporting of master agreements? What other aspects need to be considered? Please elaborate.

Generally yes. However, the following should be considered by ESMA:

The additional free text field should not be limited to the entry of bespoke agreements. It should be available also for entries where the “closed list of acceptable values” referred to in para. 329 do not include the standardized master agreement being in place between the parties. Furthermore, ESMA should undertake to review responses in the “free text” field in order to determine whether or not the

“closed list of acceptable values” is to be extended. The third field concerning the version of the master agreement is not required. Most master agreements do not have a version. In the rare case of different versions, those should already be considered in the “closed list of acceptable values” referred to in para. 329

Q 73: Do you agree with the proposed approach with regards to reporting of method of trading? What other aspects need to be considered? Please elaborate.
Q 74: In your view, what information on the nature of the indemnification (guarantee of the value, replacement of the securities, etc.), relevant for the monitoring of financial stability in relation to indemnifications could be reported? What type of data would be reported for each of the suggested elements reported e.g. values, percentages, other? Please elaborate.
Q 75: Do you agree with the proposed structure of the validation rules? If not, what other aspects should be taken into account. Please elaborate
Q 76: Do you agree with the proposed scope of the reconciliation process? If not, what other aspects should be taken into account. Please elaborate.
Q 77: Do you consider that the proposed framework for collateral reconciliation process should take place in parallel with the reconciliation of the loan data? If not, what other aspects should be taken into account. Please elaborate.
Q 78: Do you agree with the use of ISO 20022 for the purposes of ensuring common format and common encoding of files exchanged between TRs during the inter-TR reconciliation process? If not, what other common standard would you propose?
Q 79: Do you agree with standardising the timeline for finalisation of the inter-TR reconciliation process? Do you agree with the proposed timeline for finalisation of the inter-TR reconciliation process? If not, what would be a most appropriate timeline? What other aspects should be taken into account? Please elaborate.

We have no comments.

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

No. The field “haircut or margin” should be left out (not only at reconciliation). Under German law, over-collateralization is not only reached by deeming collateral to have a lower value but also by deeming the secured claims higher than they are. Such at least applies where insurance companies, UCITS and other regulates investment funds (respectively their managers) are counterparty of a securities loan transaction.

Furthermore, haircuts agreed between the counterparties may differ from case to case. Typically a collateral matrix could be documented in an up to 30 pages table. Multiplying the volume with the number of counterparties shows the tons of data required for complying with the obligation to report the haircut applied. It would be very complex to report such a matrix. It is unclear how haircuts should be reported if not all assets provided as collateral are subject to the same haircut. As TRs should have the possibility to reject as “logical error”, the special collateralization system indicated in the first para of this response would trigger such error.

To report the value of collateral received/provided could instead provide a clear picture of the current status of collateralization and could allow covering all kind of regulatory systems by which an overcollateralization is reached.

Furthermore, we want however to insist once again the fact the LEI should be the only identifier to identify the counterparties. We would also suggest adding a field for the CCP LEI.

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

ESMA mentioned that it intends to consider a “free text” field with respect to the master agreements (please see Q72). In that aspect there should be a tolerance in order to avoid conflicting reports. As far as valuations are to be considered, there must be a tolerance levels. Differences may occur where different price sources or timings are used by the counterparties.

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

Generally yes. However, ESMA should not leave the interpretation to the TRs if a report is logical or not. As explained in our response to Q80, over-collateralization may also result to deem the secured obligation higher than it is (rather than applying haircuts). It could also be the case that a counterparty is entitled to call back collateral provided but does not make use of that right. Responding with a rejection of the report for logical reasons (e.g. considering the notional of bonds provided as collateral and the corresponding haircut does not lead to the value of the bonds determined in the report) would not be the reaction that reporting entities could expect.