

MEMO# 29788

March 24, 2016

ESMA Discussion Paper on EU Securities Financing Transactions Regulation - Member comments requested by 8 April 2016

[29788]

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TO: ICI GLOBAL CAPITAL MARKETS UNION TASK FORCE
ICI GLOBAL REGULATED FUNDS COMMITTEE No. 21-16
ICI GLOBAL SHADOW BANKING TASK FORCE No. 1-16
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 11-16
INTERNATIONAL COMMITTEE No. 19-16
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 8-16
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 9-16
SECURITIES OPERATIONS ADVISORY COMMITTEE RE: ESMA DISCUSSION PAPER ON EU
SECURITIES FINANCING TRANSACTIONS REGULATION - MEMBER COMMENTS REQUESTED BY
8 APRIL 2016

On 11 March 2016, the European Securities and Markets Authority (ESMA) published a discussion paper (DP) [\[1\]](#) on the draft Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) it is required [\[2\]](#) to develop under the Securities Financing Transactions Regulation (SFTR). [\[3\]](#) ESMA is seeking comments on the DP by 22 April 2016. There are nearly 150 questions in the DP.

ICI Global is considering responding to a limited number of questions. Members should contact Giles Swan, at giles.swan@iciglobal.org or on +44 207 961 0832, with any comments or specific concerns by Friday 8 April 2016.

Background to the SFTR

The SFTR lays down rules for counterparties [\[4\]](#) to Securities Financing Transactions (SFTs), including UCITS managers [\[5\]](#) and AIFMs. [\[6\]](#) SFTs are broadly defined as: repurchase transactions ("repos"); securities or commodities lending (transactions); securities or commodities borrowing (transactions); buy-sell back transactions; sell-buy back

transactions and margin lending transactions. [7] The definition of a SFT is intended to capture a broad range of transactions that are used, inter alia, “as a source of funding, for liquidity and collateral management, as a yield-enhancement strategy, to cover short sales or for dividend tax arbitrage”, [8] including liquidity swaps and collateral swaps and transactions with equivalent economic effects. [9]

The following SFTR obligations are of greatest relevance to funds and fund managers:

- i. Transparency of SFTs [10] – counterparties to SFTs are required to report transaction, collateral and counterparty data for SFTs they have concluded, as well as any modification or termination thereof, to a registered trade repository (TR) [11] by the following working day;
- ii. Transparency towards investors [12] – UCITS managers and AIFMs must disclose information on their use of SFTs and total return swaps (TRS) [13] in periodic reports (e.g. annual and half-yearly reports) and pre-contractual documents (e.g. prospectus);
- iii. Transparency of reuse [14] – the right of a counterparty to an SFTs to reuse received collateral is subject to prior express consent from, and risk disclosure to, the other counterparty.

ESMA Discussion Paper

The DP describes proposals for the RTS and ITS on the transparency of SFTs required under the SFTR. ESMA did not propose RTS for the transparency of SFTs to investors because it believes the requirements in the SFTR annex [15] are adequate. There is no mandate to develop RTS or ITS for transparency related to collateral reuse.

The DP is organised in the following manner:

- Sections 1 and 2: an overview of ESMA’s approach and SFTR background
- Section 3: registration and supervision of TRs.
- Section 4: reporting including, “logic”, content and structure.
- Section 5: transparency and data availability
- Section 6: data fields

DP areas of greatest relevance to funds and fund managers are summarised below, along with references to related DP questions.

Section 2 - Background to ESMA’s Proposals

In developing the RTS and ITS, ESMA will consider existing EU Regulations and ongoing work at the international level. Further ESMA must “to the extent feasible and relevant minimise overlaps and avoid inconsistencies between the technical standards” [16] adopted pursuant to the SFTR and EMIR. In addition, where feasible, ESMA will take account of the SFT data collection framework of the Financial Stability Board’s (FSB). [17]

Section 3 – Registration and Supervision of Trade Repositories

ESMA proposes a framework for the registration of TRs with two elements: (i) transposition of existing relevant provisions [18] in the EMIR RTS; [19] and (ii) new provisions for TRs to establish procedures to verify the completeness and correctness of SFTs that are reported to them. [20] ESMA also proposed a framework for the registration of new TRs [21] and for existing registered TRs seeking to extend their registration. [22] ESMA is seeking feedback on its approach to TR registration and supervision (Questions 1-10).

Section 4 – Reporting

ESMA proposes the following in regard to format, reporting logic and content and structure for SFT reports:

Section 4.1 – Reporting Format

ESMA proposes an ISO 20022 technical format for SFT reports made to TRs, and for data reporting from TRs to public authorities. In support of this approach, ESMA states that the draft MIFID RTS, the draft MAR ITS, and the reporting instructions for Money Market Statistical Reporting [\[23\]](#) follow ISO 20022 standards. ESMA is seeking comment on the adoption of the ISO 20022 standard (Questions 11-13).

Section 4.2 – Reporting logic

ESMA proposes two perspectives for the reporting of SFTs:

- i. an “entity perspective” [\[24\]](#) – based on the capacity of the market participant (i.e. principal vs other); and
- ii. an “SFT perspective” [\[25\]](#) – transaction only vs. transaction and position reporting of CCP-cleared SFTs.

Under the entity perspective, ESMA defines the counterparty to an SFT as the entity that acts on a principal basis (i.e. on its own account). [\[26\]](#) ESMA defines the party to an SFT that acts as an intermediary and on behalf of a customer as a “broker” [\[27\]](#). It has also defined a CCP [\[28\]](#), securities lending agent [\[29\]](#), tri-party agent [\[30\]](#) and CSD [\[31\]](#) for the purpose of specifying those entities that may, in certain instances, be deemed to be a counterparty to an SFT. ESMA is seeking feedback on the definitions (Questions 14 and 15).

Under the SFT perspective, ESMA asserts that SFTR Article 4(1) requires end-of-day transaction-level reporting of SFTs in full alignment with EMIR. In addition, ESMA is considering whether to require position-level reporting of CCP-cleared SFTs, as contemplated under SFTR Article 4(9). ESMA is seeking comment on the need for, and feasibility of, position-level reporting CCP-cleared SFTs (Questions 16-21).

For SFTR Article 4(1) reporting of term modifications and terminations, ESMA proposes two approaches:

- i. an EMIR-consistent approach, [\[32\]](#) under which “action types” (e.g. new, modify, error, early termination etc.) would be specified in a report, along with relevant data;
- ii. a combined business event and technical approach, [\[33\]](#) under which specified “event types” (e.g. repo trade event, re-pricing life cycle, termination life cycle) would be supplemented by “technical actions” (e.g. new, modification, correction, cancellation) in the report, along with relevant data.

ESMA is seeking feedback on the proposed approaches, including the benefits and drawbacks, and comments on the list of specified actions, technical actions and event types (Questions 22-26). To achieve consistency with EMIR, ESMA also proposes and seek input on the inclusion of a “counterparty side” field in SFT reports to identify the buyer and the seller in an SFT on the basis of proposed rules for different types of SFT (Questions 27-29).

ESMA seeks feedback on its proposed reporting approach for the following trade scenarios:

- Repo trade without central clearing (Questions 30, 31);
- Repo trade with central clearing (Questions 32-37);
- Bilateral securities lending trade: (i) on a principal basis; (ii) with an agency intermediary; and (iii) with principal intermediary (Questions 38-40);
- Securities lending trade involving central clearing (Questions 41-44);
- Unsecured securities or commodities lending/borrowing (Question 46-48);
- SFTs involving commodities (Questions 49-63);
- Margin Lending (Questions 64-71).

For securities lending or borrowing transactions, ESMA proposes that the market value of securities on loan be reported as an element of transaction data and updated by counterparties on a daily basis. ESMA is seeking feedback on this requirement (Question 45). [\[34\]](#)

On the possibility of duplication, ESMA acknowledges that tri-party agents providing outsourced collateral management for SFTs may provide data to counterparties that may be included in SFT reports. [\[35\]](#) ESMA asks whether the requirement for T+1 reporting under SFTR will create issues for SFT counterparties involving tri-party agents (Question 72).

Section 4.3 – Content and structure of the SFT report

ESMA proposes extensive reporting fields for counterparties and transactions in an SFT report. A consolidated summary of these fields for each type of SFT is in the Annex to this memo. ESMA seeks feedback on the categorisation of data (Question 73) and the following aspects of the proposed reporting fields:

- Identification of branches, and the reporting of trades concluded by branches (Questions 74-78);
- Reporting of beneficiaries, where different to the counterparties to the SFT (Question 79);
- Linking of SFTs using a common identifier (Questions 80, 81);

ESMA also proposes reporting fields for collateral data (see Annex for a consolidated summary). ESMA seeks feedback on the following aspects of the proposed reporting fields:

- Trade-based, trade-dated, value-dated and net exposure collateral allocation (Question 82);
- Elements of collateral to be reported, including cash collateral (Questions 83, 84) and securities or commodities collateral (Questions 85, 86);
- Collateral pool identification (Questions 87-90);
- Trade-level data or separate collateral reporting (Questions 91,92);
- Updates to collateral information (Question 93);
- Linking of collateral data (Questions 94-98);
- Margin lending, including funding sources (Question 99-103), collateral actions (Questions 104-111) and re-use (Question 112);
- Collateral re-use (Questions 113-117), including the availability for re-use (Questions 118,119);

ESMA also proposes reporting fields for the following aspects of an SFT:

- i. clearing and settlement information, [\[36\]](#) including information on the place of settlement of an SFT (Questions 120-124);

- ii. the master agreement under which an SFT was concluded, [\[37\]](#) if applicable (Questions 125-126);
- iii. the method of trading, [\[38\]](#) for example, telephone, automated trading systems, automatic trading systems (Questions 127,128).

Section 5 – Transparency and availability of data

Section 5.1 – Operational Standards for Data Collection

ESMA has proposed operational standards for the validation and reconciliation of data by TRs (Questions 129-134), and for the common feedback to be provided by a TR to a reporting counterparty, within an hour of the submission of a report (Question 135).

Section 5.2 – Public Data

ESMA has proposed an approach to the publication of consolidated, aggregated data from TRs that is at a more granular level than the approach under EMIR, but excluding some of the standards established by the FSB. ESMA considers that it is necessary to exclude some of the granular sectorial identification requested by the FSB in its November 2015 report on Standards and processes for global securities financing data collection and aggregation [\[39\]](#), on the basis that some sectors might not have many representatives reporting to a TR, and in these instances sectorial aggregation might allow for the identification of some individual counterparties. ESMA argues that its proposed approach will “increase the quality and value of the aggregate data for the general public, but still preventing the identification of counterparties.”

ESMA intends to establish rules on: (i) the frequency of publication of data; (ii) the way aggregations should be performed; (iii) the relevant reference periods; and (iv) publication dates. [\[40\]](#) To perform aggregations, ESMA considers that various characteristics of SFTs will need to be considered, including the location of counterparties, the type of SFT, the status of the SFT at the TR, the type of venue of execution, whether the SFT is cleared or not, and the way collateral is transferred. [\[41\]](#) ESMA is seeking feedback its approach to publishing aggregate data on this basis (Questions 136-138).

ESMA has also proposed requirements for TRs to provide data to authorities (Question 139), including transaction-level reports (Question 140), position-level reports (Questions 141-143) and operational standards for the aggregation and comparison of data across TRs (Questions 144-145).

Section 6 – Tables of Fields

ESMA has proposed fields for the reporting of collateral, transaction and counterparty data for each type of SFT. A consolidated summary of these fields is in the Annex to this memo.

Next Steps

Responses to the DP must be submitted by 22 April 2016 using a reply form [\[42\]](#) via the ESMA website. [\[43\]](#) ESMA will develop detailed rules on which it will publish a follow-up consultation in the second half of 2016. ESMA intends to send its draft rules for approval to the European Commission by 13 January 2017.

As noted above, ICI Global is likely to respond to a limited number of questions in the DP. Members are invited to provide concerns and comments to Giles Swan at

giles.swan@iciglobal.org or on +44 207 961 0832.

Giles Swan
Director of Global Funds Policy - ICI Global

Attachment

endnotes

[1] Discussion Paper, Draft RTS and ITS under SFTR, European Securities and Markets Authority, 11 March 2016, (“ESMA Discussion Paper”), available from <https://www.esma.europa.eu/sites/default/files/library/2016-356.pdf>

[2] Annex III, ESMA Discussion Paper contains the legislative mandate to develop technical standards

[3] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2365>

[4] A “counterparty” is defined to include an entity established in a third country, if the SFT is concluded in the course of the operations of a branch in the Union of that counterparty (Article 2(1)(a)(ii), SFTR).

[5] Article 2(1)(b), SFTR, refers to UCITS management companies and UCITS investment companies in accordance with Directive 2009/65/EC (collectively referred to as “managers of UCITS” in this memo).

[6] Article 2(1)(c), SFTR

[7] Article 3(6)-(10), SFTR

[8] Recital 8, SFTR

[9] Recital 7, SFTR

[10] Chapter II, SFTR

[11] Trade repositories (TR) are subject to registration and supervision requirements with ESMA (Chapter III, SFTR). Where a TR is not available then a counterparty to an SFT shall ensure that data is reported to ESMA (Article 4(5)).

[12] Chapter IV, SFTR

[13] As defined in Article 2(7) of EMIR

[14] Chapter V, SFTR

[15] Section A of the annex to the SFTR sets out information to be provided in the UCITS half-yearly and annual reports and the AIF’s annual report. Section B sets out information to be included in the UCITS Prospectus and AIF disclosure to investors.

[16] Recital 10, SFTR

[17]

<http://www.fsb.org/wp-content/uploads/FSB-Standards-for-Global-Securities-Financing-Data-Collection.pdf>

[18] See Section 3.3, ESMA Discussion Paper and Article 5(2), SFTR, which references many aspects of the EMIR RTS 150/2013 concerning the registration of a TR.

[19] Commission Delegated Regulation (EU) No 150/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository, available from

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0025:0032:en:PDF>

[20] Section 3.4, ESMA Discussion Paper

[21] Section 3.5, ESMA Discussion Paper

[22] Section 3.6, ESMA Discussion Paper

[23] Regulation (EU) No 1333/2014 of the European Central Bank of 26 November 2014 concerning statistics on the money markets, available from

https://www.ecb.europa.eu/ecb/legal/pdf/oj_jol_2014_359_r_0006_en_txt.pdf

[24] Section 4.2.1.1, ESMA Discussion Paper

[25] Section 4.2.1.2, ESMA Discussion Paper

[26] “A party to an SFT that acts on a principal basis, that is on own account, is referred to as a counterparty of an SFT”, paragraph 96, ESMA Discussion Paper

[27] “A party to an SFT that acts as an intermediary and on behalf of a customer shall be defined as a broker. A counterparty may use the services of a broker or a lending agent to conclude an SFT”, paragraph 97, ESMA Discussion Paper

[28] Paragraph 98, ESMA Discussion Paper

[29] Paragraph 99, ESMA Discussion Paper

[30] Paragraph 100, ESMA Discussion Paper

[31] Paragraph 101, ESMA Discussion Paper

[32] Section 4.2.2.1, ESMA Discussion Paper

[33] Section 4.2.2.2, ESMA Discussion Paper

[34] Section 4.2.4.2.3, ESMA Discussion Paper

[35] Section 4.2.5, ESMA Discussion Paper

[36] Section 4.3.7, ESMA Discussion Paper

[37] Section 4.3.8, ESMA Discussion Paper

[38] Section 4.3.9, ESMA Discussion Paper

[39]

<http://www.fsb.org/wp-content/uploads/FSB-Standards-for-Global-Securities-Financing-Data-Collection.pdf>

[40] Paragraph 306, ESMA Discussion Paper

[41] Paragraph 307, ESMA Discussion Paper

[42]

https://www.esma.europa.eu/sites/default/files/library/2016-356_reply_form_dp_sftr.docx

[43]

<https://www.esma.europa.eu/press-news/consultations/discussion-paper-draft-rtss-and-its-impact-on-derivatives-securities-financing-transaction>

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