ICMA EUROPEAN REPO and COLLATERAL COUNCIL

Mr. John Berrigan
Deputy Director-General
Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA)
Rue de Spa 2
1000 Brussels
Belgium

31 October 2016

Dear Sean,

Reporting Requirements in Respect of Repos

In my capacity as the Chairman of the International Capital Market Association's (ICMA's) European Repo and Collateral Council (ERCC), and following from our recent discussion's in the forum of the IMF/ECB conference in Frankfurt, I'm writing to solicit clarification regarding the application of certain reporting requirements in the context of repos.

As a generic matter the ICMA ERCC considers that Regulation 2015/2365/EU, of 25 November 2015 on transparency of securities financing transactions and of reuse (SFTR), is the appropriate legislative instrument for applicable repo reporting requirements appropriately tailored to the specificities of these important financing transactions. The corollary of this is that the ICMA ERCC does not consider that Regulation 2014/600/EU, of 15 May 2014 on markets in financial instruments (MiFIR), and Directive 2014/65/EU of 15 May 2014 on markets in financial instruments (MiFID), are well suited to the creation of meaningfully designed repo reporting requirements.

In light of this overall perspective, the ICMA ERCC is pleased to note that almost all MiFIR transaction reporting in relation to SFTs is dis-applied by way of a specific exemption in RTS 22, recognising that SFTR will collect the necessary information. And the ICMA ERCC is actively engaged in seeking to assist in ensuring that well designed SFTR reporting is now appropriately implemented. In the spirit of the Capital Markets Union (CMU) project which seeks to promote among other things a pragmatic approach in the roll out of the various regulatory initiatives, the ICMA ERCC continues to urge that this exemption be extended to also cover those SFTs where the counterparty is a member of the ESCB (as fully articulated in our attached 22 September 2016 letter).

Also in the spirit of the CMU project, the ICMA ERCC has identified that there is an urgent need to understand the relevance of MiFID best-execution reporting requirements, as specified in RTS 27 and RTS 28, in relation to repo transactions. This matter is urgent because, with MiFID best execution reporting requirements due to be implemented from January 2018, the time available to develop necessary reporting applications is limited. Yet it is not apparent to ICMA ERCC members why such best execution reporting obligations should apply to repo transactions, nor how any information reported on repo best execution could prove to be meaningful in case such best execution reporting obligations were to be applied.

RTS 27 specifies detailed reporting requirements for trading venues (regulated markets, multilateral trading facilities, and organised trading facilities), systematic internalisers (SIs), market makers, and other liquidity providers[1], to make publicly available, at no charge, data relating to the quality of execution of transactions on that venue (or with that liquidity provider). Details to be made available include price data (intraday and daily), costs related to execution, likelihood of execution, as well as additional information related to the type of venue. With respect to intraday price information, there is an exemption for money market instruments where the transaction value is > €10 million. Best execution data are required to be published quarterly, no later than three months after the end of each quarter, using specified reporting templates, and should be made publicly available in machine-readable form.

RTS 28 specifies reporting requirements for investment firms executing client orders related to the details and quality of execution for each class of financial instrument on their top five execution venues (including SIs, market makers, and other liquidity providers) in terms of trading volumes. Data includes the identity of the trading venues, volume and number of transactions (disaggregated by types of order), as well as a summary of analysis and conclusions drawn by the investment firm from their "detailed monitoring of the quality of execution obtained on all client orders". Investment firms are required to report information on an annual basis, again using specified templates. Data related to SFT client orders are required to be reported separately from client order flow in non-SFTs.

The sense of such best execution reporting obligations is clear when considering transactions in fungible instruments such as equities or bonds, where the price of the applicable securities trade relates directly to the fundamental market value of that security. The nature of repo transactions is that they comprise the sale and repurchase of securities and it might then be considered that the same logic regarding transaction pricing applies.

The ICMA ERCC wishes however to highlight that this is simply not the case. When entering into a repo the seller is providing security for a short-term loan from the buyer, which is repaid when the closing leg of the repo is executed and (equivalent) securities are repurchased. As the lender is taking credit exposure, albeit on a secured basis, each transaction is subject to a range of pricing considerations, starting with the credit standing of the borrower and including, but not restricted to, the cost of capital (re balance sheet utilisation) the term of the loan, any call or other special features, the nature of the allowable collateral and any applicable margin or haircut. Hence the pricing varies from one transaction, with different pricing for different clients, and as such data is not comparable from one transaction to the next.

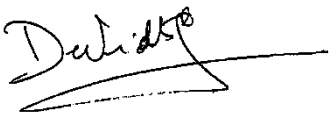
[1] Other liquidity providers should include firms that hold themselves out as being willing to deal on own account, and which provide liquidity as part of their normal business activity, whether or not they have formal agreements in place or commit to providing liquidity on a continuous basis.

Considering this very different fact pattern the ICMA ERCC believes that the sensible conclusion should be that best execution reporting obligations should not apply to repos, since repos are not themselves financial instruments but rather transactions based on underlying financial instruments. The ICMA ERCC understands that broadly similar best execution reporting obligations under US rules are not applied to repo transactions and notes that if repos were effected using a securities pledge against a cash loan[2] there would be no application of these requirements.

In case it is determined that there are to be repo best execution reporting requirements, it will be necessary to clarify details regarding how the requirement is going to be applied. It seems to the ICMA ERCC that the only way in which this might reasonably be done is to take the view that the best execution reporting obligation should require reporting of the price applied to the underlying collateral in the on-leg of the repo. The reporting could then be managed in a process which would be broadly similar to that for cash securities transactions. Nevertheless, consideration of this becomes even significantly more complex when considering that a repo is often executed against a defined basket of permissible securities, with the specific securities allocated being subject to multiple substitutions during the term of the repo, such that the pricing of the collateral depends upon the nature of the defined basket rather than being related to the price of a specific security (as in the case of a cash market transaction). Overall, the ICMA ERCC considers that any such best execution reporting would not be particularly meaningful nor comparable, since in addition to these complexities the collateral pricing is only one element in the overall transaction pricing (as previously elaborated); and in any transaction with a haircut the price of the transaction will be off market by the value of the haircut.

We would be happy to discuss these matters further and look forward to hearing from you at you earliest convenience.

Yours sincerely,



Godfried De Vidts
Chairman
ICMA European Repo and Collateral Council

Copy: ***Mr. Niall Bohan****, Head, Unit C1, Capital markets Union, Directorate C, Financial Markets, DG Financial Stability, Financial Services and Capital Markets Union, European Commission*
Ms. Maria Teresa Fabregas Fernandez*, Head, Unit C2, Financial Markets Infrastructure, Directorate C, Financial Markets, DG Financial Stability, Financial Services and Capital Markets Union, European Commission*
Ms. Verena Ross*, Executive Director, European Securities and Markets Authority*
Mr. Fabrizio Planta*, Head of Post-Trading Unit, Markets Department, European Securities and Markets Authority*

[2] Repos in the European repo market are typically structured as outright sales and repurchases of securities, using the EU concept of "title transfer financial collateral arrangements", as set out in Directive 2002/47/EC, of 6 June 2002, on financial collateral arrangements, since this provides for a more robust legal underpinning than a pledge based structure depending on the same Directive's concept of "security financial collateral arrangements".

Appendix:

ICMA ERCC Background

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 European Repo Council (ERC) was established by the ICMA in December 1999, to represent the cross-border repo market 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.

Consistent with the fact that it is repo desks which can increasingly be equally considered to be collateral desks, it has been the ICMA ERC which has served to guide the ICMA's work on collateral, providing support to its broader efforts and driving many of the ICMA's specific collateral related initiatives. Thus, just as repo and collateral are intimately related in the market, so the ICMA ERC and the ICMA's work on collateral are also intimately related. In recognition of these intimate relationships, with effect from 4 December 2015, the ICMA ERC has been renamed as the ICMA ERCC, the "European Repo and Collateral Council".

The ICMA ERCC also plays a significant role in nurturing the development of the repo market and supporting its wider use in Europe, particularly among banks, by providing education and market information. The ICMA bi-annual survey of the European repo market has become established over more than a decade as the only authoritative indicator of market size and structure and the dominant trends.

ICMA is an active force in the standardisation of repo documentation. The Global Master Repurchase Agreement (GMRA) is the most predominantly used standard master agreement for repo transactions in the cross border repo market.

Membership of the ERCC is open to ICMA members who transact repo and associated collateral business in Europe. The ICMA ERCC currently has over 90 members, comprising the vast majority of firms actively involved in this market.

ICMA EUROPEAN REPO and COLLATERAL COUNCIL

Mr. Markus Ferber
European Parliament
Rue Wiertz
Altiero Spinelli 15E242
1047 Brussels

22 September 2016

Dear Mr Ferber,

Inconsistency in MiFIR and SFTR reporting regimes

I would like to draw your attention to a specific point in the MiFIR Regulatory Technical Standards (RTS) related to regulatory reporting requirements for securities financing transactions (SFTs) which in our view creates an unnecessary burden on reporting firms. Although late in the legislative process, we hope that the ongoing scrutiny by the European Parliament and the EU Council in relation to the relevant RTS 22 offers an opportunity to address this unfortunate inconsistency.

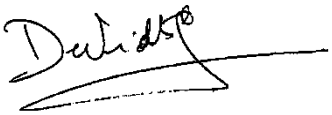
As you will be aware, the EU SFT Regulation (SFTR) will introduce a comprehensive reporting regime specifically for SFTs. However, the SFTR explicitly exempts a small subset of SFTs executed with ESCB members from the reporting obligation, presumably because the relevant information is already available to central banks and given that these transactions mainly involve banks borrowing on a secured basis money from central banks, the details of which are very commercially sensitive, subject to the applicable central bank collateral requirements. Unfortunately, reporting requirements under MiFIR are now set to undermine this exemption by including this subset of SFTs under the MiFIR reporting obligations, which will likely differ significantly from SFTR requirements.

While we fully support the aim of regulators to bring more transparency to SFT markets, and have ourselves contributed to this exercise through our bi-annual Repo Market Survey and various initiatives by the ERCC Operations Group, we do not think that including certain SFTs under MiFIR transaction reporting is appropriate. This will create an undue burden for firms without any obvious benefits from a supervisory perspective. Firms will have to single out these transactions from other SFTs and report them under the MiFIR regime which has not been designed to cover SFTs.

In the spirit of the Capital Markets Union project which seeks to promote among other things a pragmatic approach in the roll out of the various regulatory initiatives, we would urge you to raise this issue on behalf of the European Parliament to the other authorities involved in the legislative process, in particular the European Commission and ESMA, so that a satisfactory solution can be found which avoids unnecessary costs for firms while maintaining full transparency on the relevant aspects of SFT markets.

Appended you will find a more detailed explanation of the issue, including a drafting suggestion to address the problem. The ICMA ERCC remains at your disposal should you have any further questions and would be happy to discuss this further with you at your earliest convenience.

Yours sincerely,



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Ms. Maria Teresa Fabregas Fernandez*, Head, Unit C2, Financial Markets Infrastructure, Directorate C, Financial Markets, DG Financial Stability, Financial Services and Capital Markets Union, European Commission*
Ms. Jennifer Robertson*, Deputy Head, Unit C2, Financial Markets Infrastructure, Directorate C, Financial Markets, DG Financial Stability, Financial Services and Capital Markets Union, European Commission*

Appendix

Regulatory reporting of SFTs: SFTR v MiFIR

1. Summary of the issue:

- Article 26 MiFIR requires investment firms which execute transactions in financial instruments (admitted to trading on a trading venue) to report details of these transactions to competent authorities. In principle, this would include securities financing transactions (SFTs), although these will also have to be separately reported under SFTR.
- Following discussions on the applicability of the MiFIR reporting regime to SFTs, and the potential duplication with SFTR, ESMA's draft technical standards under MiFIR published on 28 September 2015 explicitly exempted SFTs from MiFIR reporting if they are (or will be) subject to SFTR reporting requirements.
- This left a remaining question in relation to the treatment of SFTs that will not be reported under SFTR because they have been granted an explicit exemption from SFTR reporting. More specifically, this refers to SFTs concluded with ESCB members as counterparty, which are exempt from SFTR reporting requirements according to article 2 SFTR.
- The Commission clarified this point in the final regulatory technical standards on the reporting of transactions to competent authorities adopted on 28 July 2016, which now explicitly include SFTs concluded with ESCB members in the MiFIR transaction reporting regime. While ESCB members as counterparties are themselves not subject to reporting requirements under MiFIR, an investment firm that enters into an SFT with an ESCB member would therefore have to report this trade under MiFIR.

2. ICMA position:

While we acknowledge and welcome the explicit exemption from MiFIR reporting requirements of all transactions that will be reported under SFTR, we strongly disagree with the proposal to require firms to report SFTs with ESCB members under MiFIR, for the following reasons:

- **SFTR provides the only appropriate framework to transaction report SFTs.** ESMA is currently undertaking detailed technical work to specify the SFTR reporting framework. Given the very specific nature of (each type of) SFTs, the resulting SFTR reporting framework is likely to differ significantly from MiFIR reporting requirements. This refers to the relevant reporting fields, but also extends to the underlying reporting logic, in particular in relation to collateral. It is clearly disproportionate and inappropriate to require firms to implement a very different reporting regime for a small subset of SFTs which is not consistent with the nature of the transactions and is thus highly likely to lead to technical problems.
- **The exemption for transactions with ESCB members under SFTR was a conscious political decision by the co-legislators**, presumably reflecting the fact that the details of these trades are known to central banks and can thus, if needed, be easily made available to all relevant national authorities. From a risk perspective, these transactions moreover do not seem significant given that they normally will involve banks borrowing money from central banks, the details of which are very commercially sensitive, upon provision of collateral in accordance with applicable central bank requirements. Including these transactions under the MiFIR reporting regime clearly

contradicts the political decision taken by co-legislators. The aim is thus not to prevent regulators from obtaining relevant information about certain SFTs, but rather to avoid unnecessary administrative burden for firms, a problem which the Commission is highlighting as one of the key themes emerging from the recent CMU Call for Evidence.

3. Suggested solution:

In order to address this issue, ICMA would recommend **deleting the explicit inclusion of SFTs concluded with ESCB members** in the penultimate sentence of article 2(5) of the final RTS 22, thus extending the exemption in that article to all SFTs as defined under SFTR.

Article 2
Meaning of transaction

5. A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include the following:
(a) securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council;
(b) (…)

~~**The exclusion provided for in point (a) of the first subparagraph shall not apply to the securities financing transactions to which a member of the European System of Central Banks is a counterparty.**~~

ANNEX: Relevant articles

a) MiFID2/R

MiFIR level 1 text (published on 12 June 2014)

Article 26
Obligation to report transactions

1. Investment firms which execute transactions in financial instruments shall report complete and accurate details of such transactions to the competent authority as quickly as possible, and no later than the close of the following working day.
The competent authorities shall, in accordance with Article 85 of Directive 2014/65/EU, establish the necessary arrangements in order to ensure that the competent authority of the most relevant market in terms of liquidity for those financial instruments also receives that information.
The competent authorities shall make available to ESMA, upon request, any information reported in accordance with this Article.

2. The obligation laid down in paragraph 1 shall apply to:
(a) financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made;
(b) financial instruments where the underlying is a financial instrument traded on a trading venue; and
(c) financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue

The obligation shall apply to transactions in financial instruments referred to in points (a) to (c) irrespective of whether or not such transactions are carried out on the trading venue.

MiFIDII/R *Regulatory Technical Standard for the reporting of transactions to competent authorities* (RTS 22) (adopted by the Commission on 28 July 2016)

Article 2
Meaning of transaction

5. A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include the following:
(a) securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council;
(b) (…)

The exclusion provided for in point (a) of the first subparagraph shall not apply to the securities financing transactions to which a member of the European System of Central Banks is a counterparty.

b) SFT Regulation

SFTR Level 1 text

Article 2
Scope

2. Articles 4 and 15 do not apply to:

(a) members of the European System of Central Banks (ESCB), other Member States' bodies performing similar functions, and other Union public bodies charged with, or intervening in, the management of the public debt;
(b) the Bank for International Settlements.

3. Article 4 does not apply to transactions to which a member of the ESCB is a counterparty.