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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on reporting and transparency of securities financing transactions

(Text with EEA relevance)

{SWD(2014) 30 final}
{SWD(2014) 31 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The 2008 global financial crisis revealed important regulatory gaps, ineffective supervision, opaque markets and overly-complex products in the financial system. The EU has adopted a range of measures in order to render the banking system more solid and more stable, including strengthened capital requirements, rules on improved governance and supervision and resolution regimes. The progress made on the establishment of the Banking Union is also decisive in this context.

The proposal regarding structural reforms of the EU banking sector, which is presented in a package with this proposal, is the final piece of the new regulatory framework, ensuring that even the largest banks in the EU become less complex and can be effectively resolved, with minimum implications for tax payers.

However, the crisis highlighted the need to improve transparency and monitoring not only in the traditional banking sector but also in areas where non-bank credit activities took place, called "shadow banking"[1]. In practice, shadow banking entities and activities raise funding with deposit-like characteristics, perform maturity or liquidity transformation, allow credit risk transfer or use direct or indirect leverage. At the end of 2012 global shadow banking assets accounted for EUR 53 trillion[2], representing about half the size of the regulated banking system and mainly concentrated in Europe (around EUR 23 trillion) and in the United States (around EUR 19.3 trillion).

Actions regarding these matters have been international and coordinated through the G20 and the Financial Stability Board (FSB) which initiated a comprehensive work on the identification of key risks of the shadow banking system[3]. The overarching aim, as reaffirmed on several occasions by the G20, is to eliminate the dark corners in the financial sector that have a potential impact on systemic risk or merely result from regulatory arbitrage and extend regulation and oversight to all systemically important financial institutions, instruments and markets. In this context, in August 2013, the FSB adopted a policy framework consisting of eleven Recommendations addressing shadow banking risks in securities lending and repos. These Recommendations were subsequently endorsed in September 2013 by the G20 Leaders. The framework covers transparency of securities lending and repo transactions from financial institutions towards authorities as well as between fund managers and end investors, minimum standards for cash collateral reinvestment, rehypothecation of client assets, minimum regulatory standards for collateral valuation and management and evaluation of the introduction of CCPs in inter-dealer repo markets. This Regulation focuses on improving the transparency of securities lending and repo transactions. Transparency is important in order to ensure that authorities and all market actors concerned get an appropriate understanding of how the markets work and the magnitude and nature of any potential risks. In this context, transparency is a fundamental issue since it provides the information necessary to develop effective and efficient policy tools to prevent systemic risks.

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1 The FSB defines the shadow banking system as "credit intermediation involving entities and activities (fully or partially) outside the regular banking system".

2 Global Shadow Banking Monitoring Report 2013, 14 November 2013, FSB

3 Since 2011, five FSB shadow banking workstreams have issued recommendations on: (i) the interaction between banks and shadow banking entities; (ii) the systemic risks of Money Market Funds (MMFs); (iii) the regulation of other shadow banking entities like hedge funds; (iv) the evaluation of existing securitisation requirements and; (v) the use of Securities Financing Transactions (SFTs) like securities lending and repurchase agreements (repos).

In October 2012, the Liikanen report[4] concluded that the existing and ongoing regulatory reforms do not address all the underlying problems in the EU banking sector and issued a number of recommendations. The follow-up of these recommendations through the Regulation on structural banking reform, adopted at the same time as this proposal, will ban and put structural constraints on certain trading activities of banks. However, as stated in the Green Paper on shadow banking, adopted by the Commission on 19 March 2012, reinforcing banking regulation could drive a substantial part of banking activities beyond the boundaries of traditional banking and towards shadow banking. This would result in an increasingly opaque financial system and offer less scope for control by supervisors. This would come on top of already well-established links which currently exist between the regulated and the shadow banking sectors. Such regulatory arbitrage would greatly undermine the impact of the global and European financial reform efforts, creating substantial risks for financial instability. For this reason, the legal proposal on structural reform needs to be accompanied by binding transparency and reporting requirements for SFTs. Thus, these two sets of regulatory measures complement and mutually reinforce each other.

Confronted with these new legislative developments in the banking sector, including structural measures, it is possible that banks will shift parts of their activity into less regulated areas as shadow banking. In order to closely follow market trends regarding entities whose activities qualify as shadow banking, in particular in the area of securities financing transactions, it is necessary to implement transparency requirements that could aide supervisors and regulatory authorities in the identification of vulnerabilities as well as possible next steps to deal with any identified issues.

In order to ensure that the benefits achieved by strengthening the resilience of certain actors and markets are not diminished by financial risks moving to less regulated sectors, strengthening transparency and data availability in terms of shadow banking activities is essential. As highlighted in the Commission Communication on shadow banking and in the European Parliament Resolution on shadow banking of November 2012[5], strengthening transparency and data availability, in particular for activities frequently undertaken by the shadow banking sector such as repurchase agreements and securities lending, also called securities financing transactions (SFTs)[6], is essential. In this regard, the work undertaken by the FSB gives some precision about the transparency level that is required. Moreover, it is particularly important in order to observe the risks that may arise due to the interconnectedness of the regulated financial sector and the shadow banking sector, excessive leverage and pro-cyclical behaviour. Such an approach is fully in line with the 2013 FSB recommendations on shadow banking[7], endorsed at the St-Petersburg G20 Summit, to dampen risks and pro-cyclical incentives associated with SFTs and rehypothecation that may exacerbate funding strains in times of market stress.

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4 In November 2011, a High-level Expert Group was set up with a mandate to assess the need for structural reform of the EU banking sector, chaired by Erkki Liikanen, Governor of the Bank of Finland. For a mandate and list of members, see http://ec.europa.eu/internal_market/bank/docs/high-level_expert_group/mandate_en.pdf

5 P7_TA(2012)0427, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0427&language=EN

6 These mostly include lending or borrowing of securities and commodities, repurchase (repo) or reverse repurchase transactions, or buy-sell back or sell-buy back transactions.

7 Strengthening Oversight and Regulation of Shadow Banking; Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos, 29 August 2013www.financialstabilityboard.org/publications/r_130829b.pdf.

SFTs, other equivalent financing structures and rehypothecation play a vital role in the global financial system. SFTs consist of any transaction that uses assets belonging to the counterparty to generate financing means. In practice, this mostly includes lending or borrowing of securities and commodities, repurchase (repo) or reverse repurchase transactions, or buy-sell back or sell-buy back transactions. All these transactions have similar, even identical, economic effects. These techniques are used by almost all actors in the financial system, be they banks, securities dealers, insurance companies, pension funds or investment funds. They provide additional market liquidity, facilitate funding of market participants, support price discovery of tradable assets and enable monetary financing operations of central banks. However, they can also lead to credit creation via maturity and liquidity transformation and allow market participants to build large exposures to each other. The rehypothecation of the collateral to support multiple deals, in particular SFTs, allowed for increased liquidity as well as the build-up of hidden leverage and interconnectedness in the system.

When confidence in the value of assets, safety of counterparties and investor protection collapsed it created wholesale market runs leading to a sudden deleveraging and/or public safety nets (central bank facilities, etc.). In this context, trust and funding liquidity evaporated and it became impossible for even the biggest and strongest banks to access either short or long-term funding. They contribute to an increase in leverage and strengthen the pro-cyclical nature of the financial system, which then becomes vulnerable to bank runs and sudden deleveraging. While these techniques can have a significant impact on the performance of investment funds, they are currently not properly disclosed to investors. Contrary to other financial institutions, investment funds' managers are using investor's money when engaging in SFT activities. Without complete and accurate information regarding the use of SFTs and the potential conflicts of interest that may occur, investors are unable to take informed decisions. Thus, it is fundamental to reduce the lack of transparency of SFTs, other equivalent financing structures and rehypothecation.

Against this background, this Regulation aims at creating a safer and more transparent financial system and introduces measures to improve the transparency in three main areas: (1) the monitoring of the build-up of systemic risks related to SFT transactions in the financial system; (2) the disclosure of the information on such transactions to the investors whose assets are employed in these or equivalent transactions; and (3) the contractual transparency of rehypothecation activities. In practice, the proposed measures will cover the FSB recommendations 1 and 2 which require competent authorities to collect additional data on the use of SFTs, recommendation 5 which requires fund managers to be transparent towards their investors and recommendation 7 which in particular requires financial intermediaries to provide sufficient disclosure to their clients in relation to re-hypothecation of assets. Thus, these recommendations cover all the transparency aspects linked to the use of SFTs. To this end, this Regulation complements the proposed Regulation on structural reform of banks.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Commission launched a public consultation alongside its Green Paper on shadow banking on 19 March 2012. The input from stakeholders was wide and substantial. There was general support for a Commission initiative in this area and a growing consensus that supervision and a strengthened regulatory framework are needed to address the shadow banking system. The European Parliament's own-initiative report on shadow banking also highlighted the importance of appropriate measures in this area. Moreover, in November 2012 in preparing its international recommendations on shadow banking, the FSB conducted a

public consultation on relevant problems in SFT markets, inter alia, the lack of transparency. As part of this consultation, there was broad support for more transparency in the securities lending and repo markets, while many respondents suggested taking into account existing reporting requirements and other available market data. Many stakeholders also agreed that trade repositories are likely to be the most effective way of collecting comprehensive repo and securities lending market data.

A more targeted public consultation on different UCITS (Undertakings for Collective Investment in Transferable Securities) issues was conducted in 2012 and stakeholders were notably asked about the need to increase the transparency requirements for investment funds. The Commission obtained a wealth of information about the current transparency standards in the asset management sector, as well as views on the possible ways to improve the transparency toward investors.

This initiative also reflects discussions with all major stakeholders, including securities and banking regulators, the ECB and all types of market participants. It takes into consideration the views expressed in a public consultation on shadow banking in 2012. The views of Member States were also sought.

An Inter-service Steering Group on bank structural reform was established in March 2013 with representatives from the Directorate Generals COMP, ECFIN, EMPL, ENTR, JUST, MARKT, SG, SJ, TAXUD and the JRC. The Impact Assessment Steering Group met in March 2013, April 2013 and September 2013 and supported the work on the Impact Assessment. The draft Impact Assessment was discussed with the Impact Assessment Board (the "IAB") of the Commission on 16 October 2013. Following a negative opinion, a revised Impact Assessment was submitted in December 2013.

The impact assessment identifies three main problems in relation to securities financing transactions: the fact that regulators are unable to effectively monitor the use of SFTs, that there are risks that SFTs are used at the detriment of fund investors and that rehypothecation shifts the legal and economic risks in the market. Underlying all these problems are the core issues that were also identified by the FSB, namely the absence of comprehensive (frequent and granular) data on SFTs and that risk that SFTs create conflicts of interests between fund managers and fund investors.

In order to address the problems identified, the impact assessment concludes that a combination of different measures is necessary including reporting of SFTs to trade repositories, disclosure on the use of SFTs to fund investors and the need for prior consent to rehypothecation of the financial instruments and that these financial instruments are transferred to an account opened in the name of the receiving counterparty before rehypothecation can take place. This will ensure that the shadow banking activity of using SFTs is properly supervised and regulated. The use of SFTs as such will not be prohibited nor limited by specific restrictions but be more transparent. As such the retained options are not expected to create structural impacts on the SFT market. The retained options will increase the reporting costs for the counterparties but this increase will be outweighed by the benefits of having greater transparency for the competent authorities, clients, investors and society at large.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The legal basis for the proposal is Article 114(1) of the Treaty on the Functioning of the European Union (TFEU), which allows the adoption of measures for the approximation of national provisions aiming at the establishment and functioning of the internal market.

The FSB Recommendations and the developments envisaged following the structural reform of the Union banking sectior are likely to trigger the regulatory attention of Member States aiming to address the need for enhancing transparency of the activities that might migrate away from regulated banking groups towards shadow banks, where there may be less scope for control by supervisors. Uniform rules on transparency are thus needed to enhance financial stability, protect investors, enhance the cross-border provision of services and prevent regulatory arbitrage, and to prevent diverging national measures from creating obstacles to the smooth functioning of the internal market..

3.2. Subsidiarity

Under the principle of subsidiarity set out in Article 5 of the TFEU, in areas which do not fall within its exclusive responsibility, the EU should act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at EU level.

This proposal aims at ensuring transparency of securities financing transactions, rehypothecation and other financing structures. The interlinkages of these shadow banking activities within the Internal Market and their systematic nature call for a coordinated Union action.

The majority of securities financing transactions as well as rehypothecation activities are performed on a cross-border basis between entities that often do not have their seats in the same jurisdiction and involve assets and currencies issued in different jurisdictions. Acting at the Union level is the minimum to cover a wide range of transactions and to allow regulatory authorities at national and Union level to have a comprehensive overview of the SFTs markets across the entire EU. The effectiveness of remedies implemented in an autonomous and uncoordinated way by individual Member States would likely be very low as such remedies would be able to capture just a portion of the market. Furthermore, given the systemic impact of the problems, uncoordinated action may even prove counterproductive because of the risk of data fragmentation and incoherence. Only aggregated data at the Union level can give the necessary macroeconomic picture that is required to monitor the use of SFTs.

As regards investment funds, the European fund industry has an important cross-border dimension. The share of cross-border assets for the European investment funds industry as a whole (UCITS and non-UCITS assets under management) has more than doubled during the last decade. As of 2012 around one of two investors buy a fund that is not domiciled in its country of residence. It is therefore important that the investor protection standards are applied evenly across the EU in order to ensure that all European investors benefit from the needed transparency over the use of SFTs.

3.3. Proportionality

Under the principle of proportionality set out in Article 5 of the TFEU, the content and form of EU action should not exceed what is necessary to achieve the objectives of the Treaties.

By refraining from regulating other than introducing transparency of securities transactions, rehypothecation and other financing structures, the proposal is limited to the measures necessary to allow for an effective removal of the risks posed by shadow banking entities.

The Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union.

3.4. Detailed explanation of the proposal

The proposed Regulation contains measures addressing reporting of SFTs to trade repositories (Chapter II and III), reporting requirement on funds (Chapter IV) and requirements on counterparties engaging in rehypothecation (Chapter V). The remaining chapters, on scope and definitions (Chapter I), supervision and competent authorities (Chapter VI), relationships with third countries (Chapter VII), administrative sanctions and measures (Chapter VIII) and review and final provisions (Chapters IX and X) apply to all these parts.

This section briefly outlines the main components of this regulation.

3.4.1. Scope of proposal (Chapter I)

This Regulation aims at enhancing financial stability in the EU by means of increasing transparency of certain market activities, such as SFTs, rehypothecation and other financing structures having equivalent economic effect as SFTs. It applies to all counterparties in SFT markets, investment funds as defined by Directives 2009/65/EC and 2011/61/EU and any counterparty engaging in rehypothecation. The proposed Regulation covers all financial instruments provided as collateral as listed in Annex I Section C of Directive 2004/39/EC (MiFID).

3.4.2. Transparency of SFTs including registration and supervision of trade repositories (Chapters II and III)

This Regulation creates a Union framework under which financial or non-financial counterparties of a SFT will efficiently report the details of the transaction to trade repositories. This information will be centrally stored and easily and directly accessible to the relevant authorities, such as ESMA, ESRB, the ESCB, for the purpose of identification and monitoring of financial stability risks entailed by shadow banking activities of regulated and non-regulated entities. These provisions are in line with the FSB recommendations which state that jurisdictions should decide on the most appropriate way to collect data and build on existing data collection processes and market infrastructures where appropriate. The FSB further states that trade repositories are likely to be an effective way of collecting such data.

This reporting should, to the extent possible, minimise respective operational costs for market participants and, thus, be built around pre-existing infrastructures and processes. ESMA should consider the existing standards established by Regulation 648/2012/EC and regulating trade repositories for derivative contracts and their future developments when drawing up or proposing to revise the regulatory technical standards foreseen in this Regulation.

3.4.3. Transparency towards investor (Chapter IV)

The new provisions on transparency of the use of SFTs and other financing structures rules, set by this Regulation, are closely linked to Directives 2009/65/EC and 2011/61/EU since they form the legal framework governing the establishment, management and marketing of collective investment undertakings. In order to enable investors to become aware of the risks associated with the use of SFTs and other financing structures, fund managers should include detailed information on any recourse they have to these techniques in regular reporting intervals. The existing periodical reports that UCITS management or investment companies and AIF managers have to produce will be supplemented by this additional information on the

use of SFTs and other financing structures. These new rules on transparency supplement the provisions of Directives 2009/65/EC and Directive 2011/61/EU on AIFMs. These new uniform rules on transparency of SFT and other financing structures should apply in addition to those laid down in Directives 2009/65/EC and 2011/61/EU. These provisions are in line with the FSB Recommendations which state that authorities should review reporting requirements for fund managers to end-investors against the FSB proposal and consider whether any gaps need to be addressed.

3.4.4. Transparency of rehypothecation (Chapter V)

In order to increase contractual and operational transparency minimum information requirements should be imposed to counterparties engaging in rehypothecation. Any rehypothecation should therefore take place only with the express knowledge of inherent risks and prior consent of the providing counterparty in a contractual agreement and should be appropriately reflected in the securities accounts. The counterparty receiving financial instruments as collateral will be allowed to rehypothecate them only with the express consent of the providing counterparty and only after having them transferred to its own account. This requirement should be read in addition to Directive 2002/47/EC and Directive 2004/39/EC. The FSB Recommendations state that authorities should ensure that the regulation of client assets should provide sufficient disclosure to clients in relation to rehypothecation for clients to understand the risks. This Regulation is in line with this Recommendation.

3.4.5. Supervision and competent authorities (Chapter VI)

The proposed Regulation defines the rules for designating competent authorities, for different purposes, including authorisation, registration, supervision and enforcement of the measures regarding reporting of SFTs to trade repositories and engaging in rehypothecation. After being notified by Member States, ESMA has to publish a list of the competent authorities and update it continuously on its website.

This Regulation entrusts the supervision of compliance with rules on investment fund's transparency to the competent authorities already designated by Member States under Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to UCITS and Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFM). The reporting of as well as the compliance with rules on rehypothecation should be supervised by competent authorities designated by Member States according to Article 16 of this Regulation.

3.4.6. Relationships with third countries (Chapter VII)

Given the global nature of securities financing transactions, relevant authorities of different jurisdictions have to be able to access data held at trade repositories located in different jurisdictions. In order to ensure mutual direct access to data by the relevant authorities, Article 19 of this Regulation empowers the Commission to conclude cooperation agreements with relevant third countries, provided professional secrecy, including the protection of business secrets shared by the authorities with third parties, is ensured.

3.4.7. Administrative sanctions and measures (Chapter VIII)

Member States need to provide that appropriate administrative sanctions and measures can be applied to breaches of the proposed Regulation. To this end, a minimum set of administrative sanctions and measures should be available to the competent authorities, including withdrawal of authorisation, public warnings, dismissal of management, restitution of profits gained from the breaches of this Regulation where those can be determined, and administrative fines. When determining the type and level of sanctions, the competent authorities should take into

account a number of criteria set in the Regulation, including the size and financial strength of the responsible person, the impact of the violation and the cooperative behaviour of the responsible person. The proposed Regulation does not prevent individual Member States from fixing higher standards.

3.4.8. Review (Chapter IX)

The adoption of this Regulation would constitute the first set of transparency rules on SFTs, other financing structures and rehypothecation at EU level. It is therefore important to assess whether the measures described above have proved to be an effective and efficient way of achieving greater transparency of these activities. Therefore, three years after the entry into force of this Regulation, the Commission will report on the suitability of the transparency measures and, if appropriate, submit a revised proposal.

4. BUDGETARY IMPLICATION

The financial and budgetary impact of the proposal is indicated in the legislative financial statement attached.

2014/0017 (COD)

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REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on reporting and transparency of securities financing transactions

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[8],

Having regard to the opinion of the European Central Bank[9],

After consulting the European Data Protection Supervisor[10],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The 2008 global financial crisis revealed important regulatory gaps, ineffective supervision, opaque markets and overly-complex products in the financial system. The Union has adopted a range of measures in order to render the banking system more solid and more stable, including strengthening capital requirements, rules on improved governance and supervision and resolution regimes. The progress made on the establishment of the banking union is also decisive in this context. However, the crisis also highlighted the need to improve transparency and monitoring not only in the traditional banking sector but also in areas where non-bank credit activities take place, called “shadow banking”.

(2) In the context of its work to curb shadow banking, the Financial Stability Board (the "FSB") and the European Systemic Risk Board (the "ESRB") have identified the risks that securities financing transactions ("SFTs") pose. SFTs allow for the build-up of leverage, pro-cyclicality and interconnectedness in the financial markets. In particular, a lack of transparency in the use of securities financing transactions ("SFTs") and other financing structures has prevented regulators and supervisors as well as investors from correctly assessing and monitoring the respective bank-like risks and level of interconnectedness in the financial system in the period preceding and during the financial crisis. Against this background, on 29 August 2013, the FSB adopted a

8 OJ C , , p. .
9 OJ C , , p. .
10 OJ C […], […], p. […].

policy framework for addressing shadow banking risks in securities lending and repos. This was subsequently endorsed in September 2013 by the G20 Leaders.

(3) In March 2012, the Commission published a Green Paper on Shadow Banking. Based on the extensive feedback received and taking into account international developments, the Commission published on 4 September 2013, a Communication to the Council and the European Parliament on Shadow Banking[11]. The Communication stressed that the complex and opaque nature of SFTs makes it difficult to identify counterparties and monitor risk concentration. This also leads to the built-up of excessive leverage in the financial system.

(4) A High-Level Expert Group chaired by Erkki Liikanen adopted a report on reforming the structure of the Union banking sector in October 2012. It discussed among other things the interaction between the traditional and the shadow banking systems. The report recognised the risks of shadow banking activities such as high leverage and pro-cyclicality, and it called for a reduction of the interconnectedness between banks and the shadow banking system, which had been a source of contagion in a system-wide banking crisis. The report also suggested certain structural measures to deal with remaining weaknesses in the Union banking sector.

(5) Structural reforms of the Union banking system are dealt with in a separate legal proposal. However, imposing structural measures on banks could result in certain activities being shifted to less regulated areas such as the shadow banking sector. For these reasons, the legal proposal on structural reform of the Union banking sector should be accompanied by the binding transparency and reporting requirements for SFTs set out in this Regulation. Thus, the transparency rules of this Regulation complement the Union structural reform rules.

(6) This Regulation responds to the need to enhance transparency of securities financing markets and thus of the financial system. In order to ensure equivalent conditions of competition and international convergence, this Regulation follows the FSB Recommendations. It creates a Union framework under which information on SFTs can be efficiently reported to trade repositories and investors. This need for international convergence is reinforced by the probability that following structural reform of the Union banking sector activities that are currently exercised by traditional banks might migrate to the shadow banking sector and encompass financial and non-financial entities. Therefore, even less transparency may arise for regulators and supervisors in respect of those activities, preventing them from obtaining a proper overview of the risks linked to securities financing transactions. This would only aggravate already well-established links between the regulated and the shadow banking sectors in particular markets.

(7) In order to respond to the issues raised by the FSB Recommendations and the developments envisaged following structural reform of the Union banking sector, Member States are likely to adopt divergent national measures which could create obstacles to the smooth functioning of the internal market and be to the detriment of market participants and financial stability. In addition, the lack of harmonised transparency rules makes it difficult for national authorities to compare the micro-level data stemming from different Member States and thus to understand the real risks individual market participants pose to the system. It is therefore necessary to prevent

[11] Communication to the Council and the European Parliament on Shadow Banking – Addressing New Sources of Risk in the Financial Sector, COM(2013) 614 final.

such distortions and obstacles from arising in the Union. Consequently, the appropriate legal basis for this Regulation should be Article 114 of the Treaty on the Functioning of the European Union ("TFUE"), as interpreted in accordance with the consistent case law of the Court of Justice of the European Union.

(8) The new rules on transparency therefore provide for the reporting of details regarding SFTs concluded by all market participants, whereas they are financial or non-financial entities, including the composition of the underlying collateral, if the underlying collateral is available for use or has been used, and the haircuts applied. For reasons of efficiency, respective operational costs for market participants should be minimised and, thus, the new rules should build on pre-existing infrastructures and processes. Therefore, it is important that this legal framework is, to the extent possible, identical to that of Regulation (EU) No 648/2012/EC of the European Parliament and of the Council[12] in respect of the reporting of derivative contracts to trade repositories registered for that purpose. This should also enable trade repositories authorised in accordance with Regulation (EU) No 648/2012/EC to fulfil the repository function assigned by the new rules, if they comply with certain additional criteria.

(9) As a result, information on the risks inherent in securities financing markets will be centrally stored and easily and directly accessible, among others, to the European Securities and Markets Authority ("ESMA"), the European Banking Authority ("EBA"), the European Insurance and Occupational Pensions Authority ("EIOPA"), the relevant competent authorities, the ESRB and the relevant central banks of the European System of Central Banks ("ESCB"), including the European Central Bank ("ECB"), for the purpose of identification and monitoring of financial stability risks entailed by shadow banking activities of regulated and non-regulated entities. ESMA should consider the existing standards established by Article 9 of Regulation (EU) No 648/2012/EC and regulating trade repositories for derivative contracts and their future developments when drawing up or proposing to revise the regulatory technical standards provided for in this Regulation and aim to ensure that the relevant competent authorities, the ESRB and the relevant central banks of the ESCB, including the ECB, have direct and immediate access to all the information necessary to perform their duties.

(10) Without prejudice to the provisions of criminal or tax law, the competent authorities, ESMA, bodies or natural or legal persons other than the competent authorities, which receive confidential information, should use it only in the performance of their duties and for the exercise of their functions. However, this should not prevent the exercise, in accordance with national law, of the functions of national bodies responsible for the prevention, investigation or correction of cases of maladministration.

(11) SFTs are used extensively by fund managers for efficient portfolio management. This use can have a significant impact on the performance of those funds. They can be used either to fulfil investment objectives or to enhance returns. Managers also have the possibility to use other financing structures that have effects equivalent to SFTs. Those other financing structures include total return swaps, liquidity swaps or collateral swaps. They are also extensively used by fund managers to get exposure to certain strategies or to enhance the returns. Both SFTs and other financing structures have in common that they increase the general risk profile of the fund whereas their use is not

[12] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

properly disclosed to investors. It is crucial to ensure that investors in such funds are able to make informed choices and to assess the overall risk and reward profile of investment funds.

(12) Investments made on the basis of incomplete or inaccurate information as regards a fund's investment strategy can result in significant investor losses. It is therefore essential that investment funds disclose all relevant information linked to their use of SFTs. In addition, full transparency is especially relevant in the area of investment funds as the entirety of assets that are subject to SFTs are not owned by the fund managers but by the fund investors. Full disclosure as regards SFTs is therefore an essential tool to safeguard against possible conflicts of interest.

(13) The new rules on transparency of SFTs and other financing structures are closely linked to Directives 2009/65/EC[13] and 2011/61/EU of the European Parliament and of the Council[14] since they form the legal framework governing the establishment, management and marketing of collective investment undertakings.

(14) Collective investment undertakings may operate as undertakings for collective investment in transferable securities ("UCITS") managed by UCITS managers or investment companies authorised under Directive 2009/65/EC or as AIFs managed by alternative investment fund managers ("AIFMs") authorised or registered under Directive 2011/61/EU. These new rules on transparency supplement the provisions of those Directives. Hence, these new uniform rules on transparency of SFT and other financing structures should apply in addition to those laid down in Directives 2009/65/EC and 2011/61/EU.

(15) In order to enable investors to become aware of the risks associated with the use of SFTs and other financing structures, fund managers should include detailed information on any recourse they have to these techniques in regular reporting intervals. The existing periodical reports that UCITS management or investment companies and AIF managers have to produce should be supplemented by the additional information on the use of SFTs and other financing structures.

(16) A fund's investment policy with respect to SFTs and other financing structures should be clearly disclosed in the pre-contractual documents, such as the prospectus for the UCITS funds and the pre-contractual disclosure to investors for the AIFs. This should ensure that investors understand and appreciate the inherent risks before they decide to invest in a particular UCITS and AIF.

(17) Re-hypothecation provides liquidity and enables counterparties reducing funding costs. However, it creates complex collateral chains between traditional banking and shadow banking, posing financial stability risks. The lack of transparency on the extent to which financial instruments provided as collateral have been re-hypothecated and the respective risks in case of bankruptcy can undermine confidence in counterparties and magnify risks to financial stability.

(18) This Regulation establishes information rules towards counterparties on re-hypothecation which should not prejudice the application of sectorial rules adapted

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[13] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

[14] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

to specific actors, structures and situations. Therefore, the rules on re-hypothecation provided for in this Regulation should apply, for example, to funds and depositories only insofar as there are no more stringent rules on re-use foreseen within the framework for investment funds constituting a *lex specialis* and taking precedence over the rules contained in this Regulation. In particular, this Regulation should be without prejudice to any rule restricting the ability of counterparties to engage in re-hypothecation of financial instruments that are provided as collateral by counterparties or persons other than counterparties.

(19) In order to ensure compliance by counterparties, with the obligations deriving from this Regulation and to ensure that they are subject to similar treatment across the Union, administrative sanctions and measures which are effective, proportionate and dissuasive should be ensured. Therefore, administrative sanctions and measures set by this Regulation should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication of sanctions or measures, key sanctioning powers and levels of administrative pecuniary sanctions. It is appropriate that measures and sanctions established under Directives 2009/65/EC and 2011/61/EU apply to infringements of the investment funds transparency obligations under this Regulation.

(20) Technical standards in the financial services sector should ensure consistent harmonisation and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it is efficient and appropriate to entrust the ESMA with the elaboration of draft regulatory technical and implementing standards, which do not involve policy choices. ESMA should ensure efficient administrative and reporting processes when drafting technical standards. The Commission should be empowered to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[15] in the following areas: the details of the different types of SFTs, the details of the application for registration of a trade repository, and the frequency and the details of publication of and access to trade repositories' data.

(21) The Commission should be empowered to adopt implementing technical standards developed by ESMA by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with the procedure set out in Article 15 of Regulation (EU) No 1095/2010 with regard to the format and frequency of the reports, , the format of the application for registration of a trade repository, as well as the procedures and forms for exchange of information on sanctions with ESMA.

(22) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the list of entities that should be excluded from the scope of this Regulation in order to avoid limiting their power to perform their tasks of common interest; specific details concerning definitions; the type of fees, the matters for which

[15] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

fees are due, the amount of the fees and the manner in which they are to be paid by trade repositories, and of the amendment of the the Annex in order to update information on SFT as well as other financing structures and information to investors. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(23) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to take decisions on the assessment of rules from third countries for the purposes of recognition of third country trade repositories

(24) In accordance with the principle of proportionality, it is necessary and appropriate to ensure the transparency of certain market activities such as SFTs, rehypothecation and, where appropriate, other financing structures and to enable the monitoring and identification of the corresponding risks to financial stability. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on the European Union.

(25) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data, the right to respect private and family life, the right to defence and the principle of ne bis in idem, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial. This Regulation must be applied according to these rights and principles.

HAVE ADOPTED THIS REGULATION:

Chapter I

Subject, matter and scope

Article 1

Subject matter

This Regulation lays down rules on the transparency of securities financing transactions (SFTs), other financing structures and rehypothecation.

Article 2

Scope

1. This Regulation shall apply to:

   (a) a counterparty to a SFT that is established:

      (1) in the Union, including all its branches irrespective of where they are located;

(2) in a third country, if the SFT is concluded in the course of operations of an EU branch;

(b) management companies of undertakings for collective investment in transferable securities ("UCITS") and UCITS investment companies in accordance with Directive 2009/65/EC;

(c) managers of alternative investment funds ("AIFMs") authorised in accordance with Directive 2011/61/EU;

(d) a counterparty engaging in rehypothecation that is established:

(1) in the Union, including all its branches irrespective of where they are located;

(2) in a third country, in either of the following cases:

(i.) the rehypothecation is effected in the course of the operations of an EU branch;

(ii.) the rehypothecation concerns financial instruments provided as collateral by a counterparty established in the Union or an EU branch of a counterparty established in a third country.

2. This Regulation shall not apply to:

(a) the members of the ESCB and 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. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend the list set out in paragraph 2 of this Article.

Article 3

Definitions

For purposes of this Regulation, the following definitions shall apply:

1. "trade repository" means a legal person that centrally collects and maintains the records of security financing transactions;

2. "counterparties" means 'financial counterparties' and 'non-financial counterparties' as defined in points (8) and (9) of Article 2 of Regulation (EU) No 648/2012 as well as 'CCPs' as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;

3. "established" means:

(a) if the counterparty is a natural person, having its head office;

(b) if the counterparty is a legal person, having its registered office;

(c) if the counterparty has, under its national law, no registered office, having its head office;

4. "branch" means a place of business other than the head office which is part of a counterparty and which has no legal personality;

5. "securities or commodities lending" and "securities or commodities borrowing" mean any transaction in which a counterparty transfers securities or commodities subject to a commitment that the borrower will return equivalent securities or commodities at some future date or when requested to do so by the transferor, that transaction being considered as securities or commodities lending for the counterparty transferring the securities or commodities and being considered as securities or commodities borrowing for the counterparty to which they are transferred;

6. "securities financing transaction (SFT)" means:

   – "repurchase transaction" as defined in point (83) of Article 4 of Regulation (EU) No 575/2013;

   – "securities or commodities lending" and "securities or commodities borrowing;"

   – any transaction having an equivalent economic effect and posing similar risks, in particular a buy-sell back or sell-back transaction;

7. "rehypothecation" means the use by a receiving counterparty of financial instruments received as collateral in its own name and for its own account or for the account of another counterparty;

8. "financial instruments" means financial instruments as defined in section C of Annex I of Directive 2004/39/EC;

9. "other financing structures" means any instruments or measures that have effects equivalent to a SFT;

10. "commodity" means commodity as defined in point (1) of Article 2 of Commission Regulation (EC) No 1287/2006.

In order to reflect the evolution of market practices and technological developments, the Commission shall be empowered to adopt delegated acts in accordance with Article 27 concerning measures to further specify the types of transactions which have an equivalent economic effect and pose similar risks to SFTs as set out in point (6).

Chapter II

Transparency of SFTs

Article 4

Reporting obligation and safeguarding in respect of SFTs

1. Counterparties to SFTs shall report the details of such transactions to a trade repository registered in accordance with Article 5 or recognised in accordance with Article 19. The details shall be reported no later than the working day following the conclusion, modification or termination of the transaction.

   The reporting obligation shall apply to SFTs which:

   (a) were concluded before the date referred to in the second subparagraph of Article 29 and remain outstanding on that date;

   (b) are concluded after the date referred to in the second subparagraph of Article 29.

A counterparty which is subject to the reporting obligation may delegate the reporting of the details of SFTs.

2. Counterparties shall keep a record of any SFT that they have concluded, modified or terminated for at least ten years following the termination of the transaction.

3. Where a trade repository is not available to record the details of SFTs, counterparties shall ensure that those details are reported to European Securities and Markets Authority (ESMA).

In those cases, ESMA shall ensure that all the relevant entities referred to in Article 12(2) have access to all the details of SFTs they need to fulfil their respective responsibilities and mandates.

4. Trade repositories and ESMA shall respect the relevant conditions on confidentiality, integrity and protection of information received under this Article set out in Regulation (EU) No 648/2012, in particular Article 80 of Regulation (EU) No 648/2012. References in that article to Article 9 of Regulation (EU) No 648/2012 and to 'derivative contracts' shall be read as references to Article 4 of this Regulation and 'SFTs' respectively.

5. A counterparty that reports the details of a SFT to a trade repository or to ESMA, or an entity that reports such details on behalf of a counterparty shall not be considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

6. No liability resulting from that disclosure shall lie with the reporting entity or its directors or employees.

In cases where the details of a SFT have to be reported to a trade repository in accordance with Article 9 of Regulation (EU) No 648/2012 and that report effectively contains the details referred to in paragraph 1 of this Article, the reporting obligation set out in paragraph 1 of this Article shall be considered to have been complied with.

7. In order to ensure consistent application of this Article, ESMA, in close cooperation with the European System of Central Banks (ESCB) and taking into account its needs, shall develop draft regulatory technical standards specifying the details for the different types of SFTs that shall specify at least:

(a) the parties to the SFT and, where different, the beneficiary of the rights and obligations arising from it;

(b) the principal amount, currency, type, quality and value of collateral, the method used to provide collateral, where it is available for rehypothecation, if it has been rehypothecated, any substitution of the collateral, the repurchase rate or lending fee, counterparty, haircut, value date, maturity date and first callable date.

ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

8. In order to ensure uniform conditions of application of paragraph 1, ESMA shall, in close cooperation with the ESCB and taking into account its needs, develop draft

implementing technical standards specifying the format and frequency of the reports referred to in paragraphs 1 and 3 for the different types of SFTs;

ESMA shall submit those draft implementing technical standards to the Commission by [12 months after the publication of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Chapter III

Registration and supervision of a trade repository

Article 5

Registration of a trade repository

1. A trade repository shall register with ESMA for the purposes of Article 4 under the conditions and the procedure set out in this Article.

   To be eligible to be registered under this Article, a trade repository shall be a legal person established in the Union and meet the requirements laid down in Articles 78 and 79 of Regulation (EU) No 648/2012. References to Article 9 of Regulation (EU) No 648/2012 shall be read as reference to Article 4 of this Regulation.

2. The registration of a trade repository shall be effective for the entire territory of the Union.

3. A registered trade repository shall comply at all times with the conditions for registration. A trade repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.

4. A trade repository shall submit an application for registration to ESMA.

5. ESMA shall assess whether the application is complete within 20 working days of receipt of the application. Where the application is not complete, ESMA shall set a deadline by which the trade repository is to provide additional information. After assessing an application as complete, ESMA shall notify the trade repository accordingly.

6. ESMA shall develop draft regulatory technical standards specifying the details of the application for registration referred to in paragraph 4.

   ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation].

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7. In order to ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical standards specifying the format of the application for registration referred to in paragraph 4.

   ESMA shall submit those draft implementing technical standards to the Commission by [12 months after the publication of the Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 6

Notification of and consultation with competent authorities prior to registration

(1) If a trade repository which is applying for registration is an entity which is authorised or registered by a competent authority in the Member State where it is established, ESMA shall, without undue delay, notify and consult that competent authority prior to the registration of the trade repository.

(2) ESMA and the relevant competent authority shall exchange all information that is necessary for the registration of the trade repository as well as for the supervision of the entity's compliance with the conditions of its registration or authorisation in the Member State where it is established.

Article 7

Examination of the application

(1) ESMA shall, within 40 working days from the notification referred to in Article 5(5), examine the application for registration based on the compliance of the trade repository with this Chapter and shall adopt a fully reasoned registration decision or a decision refusing registration.

(2) A decision issued by ESMA pursuant to paragraph 1 shall take effect on the fifth working day following its adoption.

Article 8

Notification of ESMA decisions relating to registration

(1) Where ESMA adopts a registration decision or a decision refusing or withdrawing registration, it shall notify the trade repository within five working days with a fully reasoned explanation of its decision.

ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 6(1) of its decision.

(2) ESMA shall communicate any decision taken in accordance with paragraph 1 to the Commission.

(3) ESMA shall publish on its website a list of trade repositories registered in accordance with this Regulation. That list shall be updated within five working days following the adoption of a decision under paragraph 1.

Article 9

Powers of ESMA

(1) The powers conferred on ESMA in accordance with Articles 61 to 68, 73 and 74 of Regulation (EU) No 648/2012 shall be exercised also with respect to this Regulation.

References to Article 81(1) and (2) of Regulation (EU) No 648/2012 shall be read as references to Article 12(1) and 12(2) of this Regulation respectively.

(2) The powers conferred on ESMA or any official of or other person authorised by ESMA by Articles 61 to 63 of Regulation (EU) No 648/2012 shall not be used to require the disclosure of information or documents which are subject to legal privilege.

Article 10

Withdrawal of registration

1. Without prejudice to Article 73 of Regulation (EU) No 648/2012, ESMA shall withdraw the registration of a trade repository where the trade repository:

   (a) expressly renounces the registration or has provided no services for the preceding six months;

   (b) obtained the registration by making false statements or by any other irregular means;

   (c) no longer meets the conditions under which it was registered.

2. ESMA shall, without undue delay, notify the relevant competent authority referred to in Article 6(1) of a decision to withdraw the registration of a trade repository.

3. The competent authority of a Member State in which the trade repository performs its services and activities and which considers that one of the conditions referred to in paragraph 1 has been met, may request ESMA to examine whether the conditions for the withdrawal of registration of the trade repository concerned are met. Where ESMA decides not to withdraw the registration of the trade repository concerned, it shall provide full reasons.

4. The competent authority referred to in paragraph 3 shall be the authority designated under Article 22 of Regulation (EU) No 648/2012.

Article 11

Supervisory fees

1. ESMA shall charge fees to the trade repositories in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 2 of this Article. Those fees shall be proportionate to the turnover of the trade repository concerned and fully cover ESMA's necessary expenditure relating to the registration and supervision of trade repositories as well as the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks pursuant to Article 9(1) of this Regulation in combination with Article 74 of Regulation (EU) No 648/2012.

References to Article 72(3) of Regulation (EU) No 648/2012 shall be read as reference to paragraph 2 of this Article.

2. The Commission shall be empowered to adopt a delegated act in accordance with Article 27 to specify further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Article 12

Data transparency and availability

1. A trade repository shall regularly, and in an easily accessible way, publish aggregate positions by type of SFTs reported to it.

2. A trade repository shall collect and maintain the details of SFTs and shall ensure that the entities referred to in Article 81(3) of Regulation (EU) No 648/2012, the European Banking authority (EBA) and the European Insurance Occupational Pensions Authority (EIOPA) have direct and immediate access to these details to enable them to fulfil their respective responsibilities and mandates.

3. In order to ensure consistent application of this Article, ESMA shall, in close cooperation with the ESCB and taking into account the needs of the entities referred to in paragraph 2, develop draft regulatory technical standards specifying:

   (a) the frequency and the details of the aggregate positions referred to in paragraph 1 and the details of SFTs referred to in paragraph 2;

   (b) operational standards required in order to aggregate and compare data across repositories;

   (c) the details of the information to which the entities referred to in paragraph 2 have access to.

   Those draft regulatory technical standards shall ensure that the information published under paragraph 1 is not capable of identifying a party to any SFT.

   ESMA shall submit those draft regulatory technical standards to the Commission by [12 months after the publication of this Regulation].

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Chapter IV

Transparency towards investors

Article 13

Investment fund's transparency in periodical reports

1. Management companies of UCITS, UCITS investment companies and AIFMs shall inform their investors on the use they make of SFTs as well as of other financing structures:

(a) UCITS management companies or investment companies shall include this information as part of their half-yearly and annual reports referred to in Article 68 of Directive 2009/65/EC;

(b) AIFMs shall include this information in the annual report referred to in Article 22 of Directive 2011/61/EU.

2. The information on SFT as well as on other financing structures shall comprise at least the data provided for in Section A of the Annex.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend Section A of the Annex in order to reflect the evolution of market practices and technological developments.

Article 14

Investment fund's transparency in pre-investment documents

1. The UCITS prospectus referred to in Article 69 of Directive 2009/65/EC, and the disclosure by AIFMs to investors referred to in Article 24 (1) and (3) of Directive 2011/61/EU shall specify the SFT and other financing structures which UCITS management companies or investment companies, and AIFMs respectively, are authorised to use and include a clear statement that these techniques are used.

2. The prospectus and the disclosure to investors referred to in paragraph 1 shall comprise at least the data provided for in Section B of the Annex.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 27 amending Section B of the Annex in order to reflect the evolution of market practices and technological developments.

Chapter V

Transparency of rehypothecation

Article 15

Rehypothecation of financial instruments received as collateral

1. Counterparties shall have the right to rehypothecation where at least all the following conditions are fulfilled:

(a) the providing counterparty has been duly informed in writing by the receiving counterparty of the risks that may be involved in granting consent as referred to in point (b) in particular the potential risks in the event of the default of the receiving counterparty;

(b) the providing counterparty has granted its prior express consent as evidenced by the signature of the providing counterparty to a written agreement or an equivalent alternative mechanism.

2. Counterparties shall exercise their right to rehypothecation where at least all the following conditions are fulfilled:

(a) rehypothecation is undertaken in accordance with the terms specified in the written agreement referred to in point (b) of paragraph 1;

(b) the financial instruments received as collateral are transferred to an account opened in the name of the receiving counterparty.

3. This Article is without prejudice to stricter sectoral legislation, in particular to Directive 2011/61/EU and 2009/65/EC.

Chapter VI

Supervision and competent authorities

Article 16

Designation and powers of competent authorities

1. For the purpose of this Regulation, competent authorities shall be:

(a) for financial counterparties, the competent authorities referred to in point (8) of Article 2 of Regulation (EU) No 648/2012;

(b) for non-financial counterparties, the competent authorities designated in Article 10(5) of Regulation (EU) No 648/2012;

(c) for CCPs, the competent authorities designated in accordance with Article 22 of Regulation (EU) 648/2012;

(d) for central securities depositories, the competent authorities designed in accordance with [CSDR];

(e) for investment funds, the competent authorities designated in accordance with Directive 2009/65/EC and Directive 2011/61/EU.

2. The competent authorities shall exercise the powers conferred on them by the provisions referred to in paragraph 1 and supervise compliance with the obligations set out in this Regulation.

3. The competent authorities referred to in point (e) of paragraph 1 of this Article shall monitor UCITS or AIFs established or marketed in their territories to verify that they do not use SFTs and other financing structures unless they comply with Articles 13 and 14.

Article 17

Cooperation between competent authorities

1. The competent authorities referred to in Article 16 and ESMA shall cooperate closely with each other and exchange information for the purpose of carrying out their duties pursuant this Regulation, in particular to identify and remedy breaches of this Regulation.

2. The competent authorities referred to in Article 16 and ESMA shall cooperate closely with the relevant members of the ESCB where relevant for the exercise of their duties, in particular in relation to Article 4.

Article 18

Professional secrecy

1. The obligation of professional secrecy shall apply to all persons who work or have worked for the entities referred to in Article 12(2) and the competent authorities referred to in Article 16, for ESMA, EBA and EIOPA or for auditors and experts instructed by the competent authorities or ESMA, EBA and EIOPA. No confidential information that those persons receive in the course of their duties shall be divulged to any person or authority, except in summary or aggregate form such that an individual counterparty, trade repository or any other person cannot be identified, without prejudice to cases covered by criminal or tax law or to this Regulation.

2. Without prejudice to cases covered by criminal or tax law, the competent authorities, ESMA, EBA, EIOPA, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of this Regulation or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them or in the context of administrative or judicial proceedings specifically relating to the exercise of those functions, or both. Where ESMA, EBA, EIOPA the competent authority or another authority, body or person communicating information consents thereto, the authority receiving the information may use it for other non-commercial purposes.

3. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 1 and 2. However, those conditions shall not prevent ESMA, EBA, EIOPA, the competent authorities or the relevant central banks from exchanging or transmitting confidential information in accordance with this Regulation and with other legislation applicable to investment firms, credit institutions, pension funds, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.

4. Paragraphs 1 and 2 shall not prevent the competent authorities from exchanging or transmitting confidential information, in accordance with national law, that has not been received from a competent authority of another Member State.

Chapter VII

Relationship with third countries

Article 19

Recognition of trade repositories

1. The Commission may adopt implementing acts determining that the legal and supervisory arrangements of a third country fulfil the conditions set out in Article 75 of Regulation (EU) No 648/2012 for the purposes of this Regulation.

2. A trade repository established in a third country may provide its services and activities to entities established in the Union for the purposes of Article 4 only after

its recognition by ESMA in accordance with the requirements laid down in paragraph 3 of this Article.

3. A trade repository referred to in paragraph 2 shall submit to ESMA its application for recognition together with all necessary information, including at least the information necessary to verify that the trade repository is authorised and subject to effective supervision in a third country which satisfies all the following criteria:

   (a) it has been recognised by the Commission, by means of an implementing act pursuant to paragraph 1, as having an equivalent and enforceable regulatory and supervisory framework;

   (b) it has entered into an international agreement with the Union pursuant to Article 75(2) of Regulation (EU) No 648/2012;

   (c) it has entered into cooperation arrangements pursuant to Article 75(3) of Regulation (EU) No 648/2012 to ensure that Union authorities, including ESMA, have immediate and continuous access to all the necessary information.

   References to 'derivative contracts' in Article 75(2) of Regulation (EU) No 648/2012 shall be read as references to 'SFTs' for the purpose of this Regulation.

4. Within 30 working days of receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a deadline by which the applicant trade repository has to provide additional information.

5. Within 180 working days of the submission of a complete application, ESMA shall inform the applicant trade repository in writing with a fully reasoned explanation whether the recognition has been granted or refused.

6. ESMA shall publish on its website a list of the trade repositories recognised in accordance with this Article.

7. By way of derogation from points (b) and (c) of paragraph 3, where direct and immediate access by Union relevant authorities to the data they need to fulfil their respective responsibilities and mandate available at trade repositories registered or established in third countries is ensured as a binding and enforceable obligation against those trade repositories, the Commission may conclude cooperation agreements with the relevant third country authorities regarding mutual access to, and exchange of information on, SFTs held in trade repositories which are established in that third country, provided that professional secrecy, including the protection of business secrets shared by the authorities with third parties, is guaranteed.

8. ESMA may establish cooperation arrangements with relevant authorities of third countries under the conditions set out in Article 76 of Regulation (EU) No 648/2012 with a view to establishing cooperation arrangement to access information on SFTs held in Union trade repositories. References to 'derivative contracts' in Article 76 of Regulation (EU) No 648/2012 shall be read as references to 'SFTs' for the purpose of this Regulation.

Chapter VIII

Administrative sanctions and measures

Article 20

Administrative sanctions and measures

1. Without prejudice to Article 25 and the right of Member States to provide for and impose criminal sanctions, Member States shall, in conformity with national law, provide for competent authorities to have the power to impose administrative sanctions and other administrative measures in relation to at least the following breaches:

   (a) breach of the reporting obligation set out by Article 4;

   (b) breach of Article 15.

   Where the provisions referred to in the first subparagraph apply to legal persons, in case of a breach Member States shall provide for competent authorities to be able to apply sanctions, subject to the conditions laid down in national law, to members of the management body, and to other individuals who under national law are responsible for the breach.

2. The administrative sanctions and measures taken for the purpose of paragraph 1 shall be effective, proportionate and dissuasive.

3. Where Member States have chosen to lay down criminal sanctions for the breaches of the provisions referred to in paragraph 1 of this Article, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible violations of Articles 4 and 15, and to provide the same to other competent authorities and ESMA to fulfil their obligation to cooperate with each other and, where relevant with ESMA for the purposes of paragraph 1 of this Article.

   Competent authorities may also cooperate with competent authorities of other Member States with respect to the exercise of their sanctioning powers.

4. Member States shall, in conformity with national law, confer on competent authorities the power to apply at least the following administrative sanctions and other measures in the event of the breaches referred to in paragraph 1 of this Article:

   (a) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;

   (b) the disgorgement of the profits gained or losses avoided due to the breach in so far as they can be determined;

   (c) a public warning which indicates the person responsible and the nature of the breach;

   (d) withdrawal or suspension of the authorisation;

(e) a temporary or, for serious or repeated breaches, a permanent ban against any person discharging managerial responsibilities or any natural person who is deemed responsible, from exercising management functions;

(f) a temporary ban or, for serious or repeated breaches, a permanent ban against any person discharging managerial responsibilities or any natural person who is deemed responsible, from dealing on own account;

(g) maximum administrative pecuniary sanctions of at least three times the amount of the profits gained or losses avoided because of the breach where those can be determined;

(h) in respect of a natural person, a maximum administrative pecuniary sanctions of at least EUR 5 000 000 or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry to force of this Regulation;

(i) in respect of legal persons, maximum administrative pecuniary sanctions of at least 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU[16], the relevant total annual turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting regime according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

Member States may provide that competent authorities may have powers in addition to those referred to in this paragraph and that they may provide for a wider scope of sanctions and higher levels of sanctions than those established in this paragraph.

5. A breach of the rules laid down by Article 4 shall not affect the validity of the terms of a SFT or the possibility of the parties to enforce the terms of a SFT. A breach of the rules defined under Article 4 shall not give rise to compensation rights from a party to a SFT.

6. By [12 months after entry into force of this Regulation] Member States shall notify the rules regarding paragraphs 1, 3 and 4 to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

Article 21

Exercise of supervisory powers and sanctions

Member States shall ensure that, when determining the type and level of administrative sanctions and other measures, competent authorities shall take into account all relevant circumstances, including, where appropriate:

(a) the gravity and duration of the breach;

[16] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC OJ L 182, 29.6.2013, p. 19.

(b) the degree of responsibility of the person responsible for the breach;

(c) the financial strength of the person responsible for the breach, by considering factors such as the total turnover of a legal person or the annual income in the case of a natural person;

(d) the importance of the profits gained or losses avoided by the person responsible for the breach, insofar as they can be determined;

(e) the level of cooperation of the person responsible for the breach with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous breaches by the person responsible for the breach;

(g) measures taken by the person responsible for the breach to prevent its repetition.

Article 22

Reporting of breaches

1. The competent authorities shall establish effective mechanisms to enable reporting of actual or potential breaches of Articles 4 and 15 to competent authorities.

2. The mechanisms referred to in paragraph 1 shall include at least:

   (a) specific procedures for the receipt of reports of breaches and their follow-up, including the establishment of secure communication channels for such reports;

   (b) appropriate protection for persons working under a contract of employment, who report breaches or who are accused of breaches, against retaliation, discrimination or other types of unfair treatment;

   (c) protection of personal data both of the person who reports the breach and the natural person who allegedly committed the breach, including protection in relation to preserving the confidentiality of their identity, at all stages of the procedure without prejudice to disclosure of information being required by national law in the context of investigations or subsequent judicial proceedings.

3. Member States shall require employers to have in place appropriate internal procedures for their employees to report breaches of Articles 4 and 15.

4. Member States may provide for financial incentives to persons who offer relevant information about potential breaches of this Regulation to be granted in accordance with national law where such persons do not have other pre-existing legal or contractual duties to report such information, and provided that the information is new, and it results in the imposition of an administrative sanction or other measure for a breach of this Regulation or a criminal sanction.

Article 23

Exchange of information with ESMA

1. Competent authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed by them in accordance with Article 20. ESMA shall publish that information in an annual report.

2. Where Member States have chosen to lay down criminal sanctions for the breaches of the provisions referred to in that Article 20, their competent authorities shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal sanctions imposed. ESMA shall publish data on criminal sanctions imposed in an annual report. Where the competent authority has disclosed administrative sanctions, fines and other measures, as well as criminal sanctions to the public, it shall simultaneously notify ESMA thereof.

3. Where the competent authority has disclosed an administrative measure, sanction or criminal sanction to the public, it shall, at the same time, report that information to ESMA.

4. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraphs 1 and 2.

ESMA shall submit those draft implementing technical standards to the Commission [by 12 months after the publication of the Regulation].

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 24

Publication of decisions

1. Subject to the third subparagraph competent authorities shall publish any decision imposing an administrative sanction or other measure in relation to a breach of Articles 4 and 15 on their website immediately after the person subject to that decision has been informed of that decision.

2. The information published pursuant to the first subparagraphs shall specify at least the type and nature of the breach and the identity of the person subject to the decision.

The first and second subparagraphs do not apply to decisions imposing measures that are of an investigatory nature.

Where a competent authority considers, following a case-by-case assessment, that the publication of the identity of the legal person subject to the decision, or the personal data of a natural person, would be disproportionate, or where such publication would jeopardise an ongoing investigation or the stability of the financial markets, it shall do one of the following:

(a) defer publication of the decision until the reasons for that deferral cease to exist;

(b) publish the decision on an anonymous basis in accordance with national law where such publication ensures the effective protection of the personal data concerned and, where appropriate, postpone publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication will cease to exist during that period;

(c) not publish the decision in the event that the competent authority is of the opinion that publication in accordance with point (a) or (b) will be insufficient to ensure:

(i.) that the stability of financial markets is not jeopardised; or

(ii.) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

3. Where the decision is subject to an appeal before a national judicial, administrative or other authority, competent authorities shall also publish immediately on their website such information and any subsequent information on the outcome of such an appeal. Moreover, any decision annulling a decision subject to appeal shall also be published.

4. Competent authorities shall ensure that any decision that is published in accordance with this Article shall remain accessible on their website for a period of at least five years after its publication. Personal data contained in those decisions shall be kept on the website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

Article 25

Sanctions for the purpose of Articles 13 and 14

Sanctions and other measures established in accordance with Directive 2009/65/EC and Directive 2011/61/EU shall be applicable to breaches of the obligations set in Articles 13 and 14 of this Regulation.

Chapter IX

Review

Article 26

Review

Three years after the entry into force, the Commission shall, after consulting ESMA, report on the effectiveness and efficiency of this Regulation to the European Parliament and to the Council and, if appropriate, submit a revised proposal.

Chapter X

Final provisions

Article 27

Exercise of delegated powers

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Articles 2(3), 3, 11(2), 13(3) and 14(3) shall be conferred on the Commission for an indeterminate period of time from the date referred to in Article 28.

3. The delegation of power referred to in Articles 2(3), 3, 4, 11(2), 13(3) and 14(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 2(3), 3, 4, 11(2), 13(3) and 14(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 28

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. This Regulation shall apply from the date of entry into force, with the exception of:

   (a) Article 4(1), which shall apply 18 months after the date of entry into force; and

   (b) Articles 13 and 14, which shall apply 6 months after the date of entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned in the ABM/ABB structure

1.3. Nature of the proposal/initiative

1.4. Objective(s)

1.5. Grounds for the proposal/initiative

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2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

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3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

3.2.2. Estimated impact on operational appropriations

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council on reporting and transparency of securities financing transactions

1.2. Policy area(s) concerned in the ABM/ABB structure[17]

Internal Market – Financial markets

1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to a new action

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

Contribute to reducing the risks to financial stability and restoring investor and other market participants' confidence in financial markets

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

In the light of the general objectives above, the regulation aims at increasing the overall transparency of securities financing markets and rehypothecation, thus supporting the improved monitoring of these activities by supervisors and investors. It will contribute to the effective prevention of built-up of systemic risks and interconnectedness within the financial sector leading to systemic risk;

[17] ABM: activity-based management – ABB: activity-based budgeting.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Increased transparecy of securities financing transactions vis-à-vis supervisors;

Increased transparency of securities financing transactions and other financing structures vis-à-vis investors;

Increased operational and contractual transparency of rehypothecation vis-à-vis involved parties

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

Relevant indicators to evaluate the proposal could include:

- size of different segments of SFT markets
- level of interconnectedness and market concentration
- proportion of SFTs in overall fund
- qualitative indicators on funds' disclosure of SFTs activities
- size of rehypothecation activities
- collateral velocity

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

The proposal regarding structural reforms of the EU banking sector, which is presented in a package with this proposal, is the final piece of the new regulatory framework, ensuring that even the largest banks in the EU become less complex and can be effectively resolved, with minimum implications for tax payers. However, the crisis highlighted the need to improve transparency and monitoring not only in the traditional banking sector but also in areas where non-bank credit activities took place, called “shadow banking”.

In the context of shadow banking, the Financial Stability Board (FSB) and the European Systemic Risk Board have identified the risks that SFTs present for both traditional banking and shadow banking. SFTs allow for the build-up of leverage, pro-cyclicality and interconnectedness in the financial markets. In particular, a lack of transparency in the use of SFTs and other financing structures has prevented regulators and supervisors as well as investors from correctly assessing and monitoring the respective bank-like risks and level of interconnectedness in the financial system in the period preceding and during the financial crisis.

Against this background, on 29 August 2013, the FSB adopted a policy framework for addressing shadow banking risks in securities lending and repos. This was subsequently endorsed in September 2013 by the G20 Leaders and calls for granular and frequent reporting of SFTs, adequate disclosure of SFT activities to investors and specific rules on rehypothecation.

1.5.2. Added value of EU involvement

This proposal aims at ensuring transparency of securities financing transactions, rehypothecation and other financing structures. The interlinkages of these shadow banking activities within the Internal Market and their systematic nature call for a coordinated Union action. Acting at the Union level is the minimum to cover a wide range of transactions and to

allow regulatory authorities at national and Union level to have a comprehensive overview of the SFTs markets across the entire EU. The effectiveness of remedies implemented in an autonomous and uncoordinated way by individual Member States would likely be very low as such remedies would be able to capture just a portion of the market. Furthermore, given the systemic impact of the problems, uncoordinated action may even prove counterproductive because of the risk of data fragmentation and incoherence. Only aggregated data at the Union level can give the necessary macroeconomic picture that is required to monitor the use of SFTs.

1.5.3. Lessons learned from similar experiences in the past

n/a

1.5.4. Compatibility and possible synergy with other appropriate instruments

The EU has already initiated a number of reforms to increase the transparency of financial markets. For instance, the Regulation on OTC derivatives, central counterparties and trade repositories (European Market Infrastructure Regulation (the "EMIR") introduces measures to increase transparency of positions in derivatives for regulators as well as reduce systemic risks for market participants. EMIR ensures that information on all European derivative contracts are reported to trade repositories and directly and immediately accessible to supervisory authorities, including the European Securities and Markets Authority (ESMA), to give policy makers and supervisors a clear overview of the derivatives markets. This Regulation will pursue the same transparency objectives, building on existing Regulation and entities (trade repositories authorised under EMIR) to allow going forward in the transparency of financial markets by providing more transparency on securities financing transactions. In addition, other legislative proposals already or shortly to be, adopted by the Commission complement this proposal in terms of increasing market transparency and integrity as well as containing market disorder and reinforce investor protection. This is the case of the current revision of the Markets in Financial Instruments Directive ("MiFID") which notably provides for transparency measures towards competent authorities. The proposed Regulation also complements AIFMD and UCITS Directives concerning the transparency towards investors of SFTs and other financing structures. It is consistent with these Union texts. It is also consistent with the priorities outlined by the European Commission in its Communication on Shadow – Addressing New Sources of Risk in the Financial Sector of the 4th of September 2013, which strengthened the need to increase transparency of securities financing transactions.

1.6. Duration and financial impact

☒ Proposal/initiative of unlimited duration

Entry into force and start of application foreseen for 2015/2017.

1.7. Management mode(s) planned[18]

From the 2014 budget

☐ **Direct management** by the Commission

– ☐ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies;

☐ **Shared management** with the Member States

☒ **Indirect management** by delegating implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 208 and 209 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the "Comments" section.*

Comments

ESMA is a regulatory agency acting under the oversight of the Commission.

[18] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

The proposal foresees that the Commission should review the effectiveness of the proposed measures on a periodic basis.

2.2. Management and control system

2.2.1. Risk(s) identified

In relation to the legal, economical, efficient and effective use of appropriations resulting from the proposal it is expected that the proposal would not bring about new risks that would not be currently covered by an ESMA existing internal control framework.

2.2.2. Information concerning the internal control system set up

n.a.

2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error

n.a.

2.3. Measures to prevent fraud and irregularities

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to the ESMA without any restriction.

ESMA shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all EBA and ESMA staff.

The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by ESMA as well as on the staff responsible for allocating these monies.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
		Diff./non-diff. (19)	from EFTA countries 20	from candidate countries[21]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation

- New budget lines requested

19 Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

20 EFTA: European Free Trade Association.

21 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

This legislative initiative will have the following impacts on expenditures:

The hiring of two new TA at ESMA (as from January 2016) - See in Annex for more information on its role and the way its cost was calculated. The cost of this new TA will be fully funded by fees raised from the industry (no impact on EU budget)

- The new tasks will be carried out with the human resources available within the annual budgetary allocation procedure, in the light of budgetary constraints which are applicable to all EU bodies and in line with the financial programming for agencies. Notably, the resources needed by the agency for the new tasks will be consistent and compatible with the human and financing programming for ESMA set by the recent Communication to the European Parliament and the Council – Programming of human and financial resources for decentralised agencies 2014-2020' (COM(2013)519).

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	

DG: MARKT			2014	2015	2016	2017	2018	2019	2020	**TOTAL**
• Operational appropriations										
	Commitments	(1)								
	Payments	(2)								
Appropriations of an administrative nature financed from the envelope of specific programmes[22]										

[22] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

Number of budget line		(3)								
TOTAL appropriations for DG MARKT	Commitments	=1+1a +3								
	Payments	=2+2a +3								

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations for HEADING 1.a of the multiannual financial framework	Commitments	=4+ 6								
	Payments	=5+ 6								
	Payments	=5+ 6								

Heading of multiannual financial framework	**5**	" Administrative expenditure "

EUR million (to three decimal places)

		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
DG:									
• Human resources									
• Other administrative expenditure									
TOTAL DG <…….>	Appropriations								

TOTAL appropriations for HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

		Year **N**[23]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments								
	Payments								

[23] Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. Estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type[24]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No total	Total cost
SPECIFIC OBJECTIVE No 1[25] ...																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE NO 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

24 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

25 As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

– ☒ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☐ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **N**[26]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
HEADING 5 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 5 of the multiannual financial framework								
Outside HEADING 5[27] **of the multiannual financial framework**								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								
TOTAL								

The human resources appropriations required will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

26 Year N is the year in which implementation of the proposal/initiative starts.

27 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

– ☒ The proposal/initiative does not require the use of human resources.

– ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		Year **N**	Year **N+1**	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)								
XX 01 01 01 (Headquarters and Commission's Representation Offices)								
XX 01 01 02 (Delegations)								
XX 01 05 01 (Indirect research)								
10 01 05 01 (Direct research)								
• External staff (in Full Time Equivalent unit: FTE)[28]								
XX 01 02 01 (CA, SNE, INT from the "global envelope")								
XX 01 02 02 (CA, LA, SNE, INT and JED in the delegations)								
XX 01 04 yy[29]	- at Headquarters							
	- Delegations							
XX 01 05 02 (CA, SNE, INT - Indirect research)								
10 01 05 02 (CA, INT, SNE - Direct research)								
Other budget lines (specify)								
TOTAL								

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

[28] CA= Contract Staff; LA = Local Staff; SNE= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations).

[29] Sub-ceiling for external staff covered by operational appropriations (former "BA" lines).

Officials and temporary staff	
External staff	

3.2.4. Compatibility with the current multiannual financial framework

– ☒ Proposal/initiative is compatible the current multiannual financial framework.

– The resources needed by the agency for the new tasks will be consistent and compatible with the MFF 2014-2020 and the human and financing programming for ESMA/EBA set by the recent Communication to the European Parliament and the Council – Programming of human and financial resources for decentralised agencies 2014-2020 (COM(2013)519).

– ☐ Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. […]

– ☐ Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[30].

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts. […]

3.2.5. Third-party contributions

– The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	2014	2015	2016	2017	2018	2019	2020	Total
Member States								
TOTAL appropriations cofinanced								

[30] See points 19 and 24 of the Interinstitutional Agreement (for the period 2007-2013).

3.3. Estimated impact on revenue

– ☐ Proposal/initiative has no financial impact on revenue.

– ☒ Proposal/initiative has the following financial impact:

☒ on own resources

☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[31]						
		2014	2015	2016	2017	2018	2019	2020
Article …….		0.00	0.00	0.35	0.33	0.33	0.33	0.33

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

[…]

Specify the method for calculating the impact on revenue.

Fees to be contributed by the industry will be calculated for covering the ESMA's additional expenses generated by this legislative initiative - see Annex for more information on the calculation method

[31] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.

Annex to the Legislative Financial Statement for a proposal for Regulation of the European Parliament and of the Council on reporting and transparency of securities financing transactions

The costs related to the tasks to be carried out by ESMA have been estimated for staff expenditure in conformity with the cost classification in the ESMA draft budget for 2015.

The proposal of the Commission includes provisions for ESMA to develop three regulatory technical standards and four implementing technical standards that should ensure that provisions of a highly technical nature are consistently implemented across the EU. ESMA will have to supervise trade repositories for SFTs and to provide input into a Commission report on the implementation and effectiveness of the Regulation. ESMA will also provide the Commission with technical advice on the foreseen Commission delegated acts. In addition, ESMA may establish cooperation arrangements with relevant authorities of third countries as well as recognise trade repositories established in a third country.

Regarding the timing, it has been assumed that the Regulation will enter into force in end-2015. The additional ESMA resources are therefore only required from 2016. As regards the nature of the positions, the successful and timely delivery of new technical standards will require, in particular, additional resources to be allocated to tasks on policy, legal drafting and impact assessment. The work requires bilateral and multilateral meetings with stakeholders, analysis and assessment of options and drafting of consultation documents, public consultation of stakeholders, setting up and management of standing expert groups composed of supervisors from Member States, setting up and management of ad hoc expert groups composed of market participants and representatives of investors, analysis of the responses to consultations, drafting of cost/benefit analysis and drafting of the legal text.

The required work is closely related to the existing technical standards under EMIR that regulate the framework for trade repositories for derivative contracts. So far, there have been 6 trade repositories registered under EMIR and it is expected that a similar number of trade repositories for SFTs will apply for registration. Once registered, those will have to be supervised by ESMA. Thus, taking account of the number of trade repositories for SFTs to be supervised, the number, type and complexity of tasks to be fulfilled by ESMA, the impact on the number of full time equivalents needed to develop technical standards and to carry out new additional tasks will be limited to 2 temporary agents.

This means that two additional temporary agents are needed from 2016. It is assumed that this increased will be maintained in 2017 and 2018 since ESMA will have new supervisory tasks for trade repositories for SFTs. These new tasks are set out in the proposed Regulation and further spelled out in the explanatory memorandum. The cost of the two temporary agents and any unforeseen costs will be fully funded by fees raised from trade repositories for SFTs (e.g. registration fees, supervisory fees) and, thus, will not have an impact on EU budget.

Additional resources assumption:

The two additional posts are assumed to be a temporary agents of functional group and grade AD7.

Average salary costs for different categories of personnel are based on DG BUDG guidance;

Salary correction coefficient for Paris is 1.161.

- Mission costs estimated at €10,000.
- Recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc) estimated at €12,700.

Cost type	Calculation	Amount (in thousands)			
		2016	2017	2018	Total
Staff expenditure					
Salaries and allowances	=2x132 x1.161	307	307	307	921
Expenditure related to recruitment	=2x13	26			26
Mission expenses	=2x10	20	20	20	60
Total		353	327	327	1007