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Annex



EUROPEAN COMMISSION
Directorate General for Financial Stability, Financial Services and Capital Markets Union

Director General

Brussels,
FISMA C2

Mr Steven Maijoor
Chair, ESMA

Dear Mr Maijoor,

On 30 March 2017, the European Securities and Markets Authority (ESMA) submitted to the Commission draft regulatory technical standards (RTS) on the details of securities financing transactions (SFTs) to be reported to trade repositories and implementing technical standards (ITS) on the format and frequency of such reports, pursuant to Regulation (EU) 2015/2365.

I would like to inform you of the Commission's intention to endorse with amendments those draft RTS and ITS submitted by ESMA. Amended draft RTS and ITS which the Commission intends to adopt are attached to this letter.

More specifically, the Commission believes that it is necessary to amend provisions in the draft implementing and regulatory technical standards submitted by ESMA that envisage the mandatory use of potentially forthcoming industry standards (legal entity identifiers for branches and unique trade identifiers for transactions) for reporting to trade repositories once these standards would be '*endorsed by ESMA*' in the future. During discussions with ESMA at staff level, it has become clear that the Commission and ESMA have a different understanding as to how such potentially forthcoming standards would be 'endorsed' by ESMA and, hence, how that process should be reflected in the regulatory and implementing technical standards under SFTR. To ensure legal certainty, the proposed amendment clarifies that - after the adoption of the technical standards - the right to introduce changes to the reporting requirements due to potentially forthcoming industry standards remains with the Commission on the basis of an according proposal by ESMA. The proposed amendment avoids that the wording in the draft technical standards submitted by ESMA be understood as delegating regulatory powers to ESMA on potential future reporting requirements, which is legally not possible under the regulatory framework governing the European Supervisory Authorities.

Therefore, the proposed amendment removes from the draft regulatory and implementing technical standards the references to 'endorsements by ESMA' of potentially forthcoming industry standards and restricts the reporting obligations to requirements that market participants must comply with using current rather than future industry standards. To take account of further evolution in the field of industry standards, it is proposed to add recitals in the implementing technical standards, explaining that work is currently ongoing for the development of legal entity identifiers for branches and unique trade identifiers for transactions. The proposed recitals also explain that the use of such industry standards – once

available and considered appropriate by ESMA and the Commission for the purposes of SFT reporting– could be required through an amendment of the relevant implementing technical standards on the basis of a proposal by ESMA.

I therefore inform you that the Commission, acting in accordance with the procedures set out in Articles 10(1) and 15(1) of Regulation (EU) No 1095/2010, intends to amend the draft ITS and RTS submitted by ESMA in a way that is explained above and reflected in detail in Annex to this letter.

I draw your attention to the sixth subparagraph of Article 10(1) and the fifth subparagraph Article 15(1) of the above Regulation. According to these provisions, after the Commission informs ESMA that it intends to endorse a draft RTS or ITS with amendments, ESMA may amend the draft RTS and ITS within 6 weeks on the basis of the Commission’s proposed amendments and resubmit them in the form of a formal opinion to the Commission.

Furthermore, the different understanding between the Commission and ESMA on the meaning of an ‘endorsement by ESMA’ that materialised during the discussions on the technical standards under SFTR is also relevant in the context of the corresponding implementing technical standards under Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR). In particular, this concerns Commission Implementing Regulation (EU) 2017/105¹ laying down the implementing technical standards for the format and frequency of reports to trade repositories under EMIR which also refers to endorsements of future industry standards by ESMA in two provisions (Articles 4(9) and 4a(1)). To ensure legal certainty and the necessary degree of consistency between these two closely related legal frameworks, the Commission would ask ESMA to submit a proposal amending Commission Implementing Regulation (EU) 2017/105 in accordance with the proposed amendments of the draft technical standards under SFTR, i.e. by removing references to endorsements by ESMA.

Yours sincerely,

Olivier Guersent

Enclosure:

- Amended draft RTS on the details of securities financing transactions to be reported to trade repositories pursuant to Article 4(9) of Regulation (EU) 2015/2365
- Amended draft ITS on the format and frequency of reports on the details of securities financing transactions to trade repositories pursuant to Article 4(10) of Regulation (EU) 2015/2365

Cc: Roberto Gualtieri MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament; Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union

¹ Commission Implementing Regulation (EU) 2017/105 of 19 October 2016 amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories