Position Paper

List of concerns regarding the European Commission's recent proposal on the transparency of securities financing transactions (SFTs)

Our reference:	ECO-INV-14-122	Date:	13 October 2014
Referring to:	European Commission proposal for a regulation on reporting and transparency of securities financing transactions		
Related documents:			
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Pages:	4	Transparency Register ID no.	33213703459-54

	Text of the proposal	Insurance Europe position
Scope of the proposal and definitions	**Article 1** 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). **Article 3(6)** "securities financing transaction (SFT)" means:	The EC proposal fails to recognise differences in the workability and usability of securities lending and repos between various markets. Many smaller markets are rather illiquid. In these markets, far-reaching requirements will further limit liquidity. We suggest that the Commission should work closely with the relevant industry organisations (the International Capital Markets Association and the International Securities Lending Association ISLA) to ensure that the frequency and granularity requirements towards the required reporting are appropriate. The definition and scope of the term "Securities Financing Transactions" (SFTs) as provided in the proposal is too general. It is thus difficult to distinguish actual SFTs from ordinary loan agreements with securities as collateral. The scope of the proposal should be articulated in such a way so as to promote appropriate clarity for all market participants. Some definitions should be further detailed, in particular those in Article 3(6) third indent and article

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	– "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; **Article 3(9)** "other financing structures" means any instruments or measures that have effects equivalent to a SFT;	3(9). Overnight and reverse overnight repurchasing transactions (and in general any transactions with extremely short cut-offs) should be exempted. Given that the potential risk associated disappears by the due date of reporting, this requirement is pointless. There should be no reporting obligation for intra-group SFTs. Large insurance companies use intra-group SFTs to aggregate and manage their exposure to securities. These transactions obviously don't create or enhance systemic risk. Similarly, securities lending with other purposes than financing should be exempted. Reporting obligations should not cover all entities. Requirements could be placed upon most active users of SFTs. A disproportionate reporting burden could result in participants being driven out of the market. In particular, reporting requirements for Exchange Traded Funds (ETFs) and other UCITs are redundant given the already-existing ESMA Guideline 2012/832. This stipulates that institutional investors should receive all necessary information from funds managers. The reporting obligation in the EC proposal would not result in a higher level of investor protection.
Operational costs generated by regulatory requirements	**Recital 8** 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.	The EC proposal rightly stresses the importance of existing reporting channels. Reporting requirements should thus be harmonized with those in EMIR and MiFID, so as to minimise costs of compliance and related administrative expenses. A transaction threshold could also be considered. Furthermore, the information required and reported under the SFT regulation, EMIR and MiFID should be used by all possible authorities, including by the ECB, so as to avoid double reporting. Reporting obligations require significant changes to IT systems and generate operational costs. It is therefore of utmost importance that the phase-in period for the reporting obligations begins when all the details of this obligation are set and after the delegated acts have entered into force.

Reporting timeline	**Article 4(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 timeline for reporting could be longer than the one proposed, due to the fact that SFTs have a different nature than derivatives contracts. The reporting frequency should also not compromise trade execution quality by prematurely sharing information that could affect pricing. The proposal requires that a transaction should be reported no later than the working day that follows its conclusion. We would point out that in many situations this is not possible. For example, it's often the case that trade and value date (when the settlement amount is calculated) are different and that the information which should be reported is only available at the value date. Based on market practice, the daily report could include all SFTs on the trading entity's book - from their settlement day onward - with the status of each transaction at close of business of the reporting day.
Rehypothecation	**Article 15** 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	Rehypothecation is a crucial measure to overcome the growing demand of collateral. Any rules concerning rehypothecation should be clearly defined and easy to implement without any administrative burden. The proposal provides guidance on rehypothecation from a business/prudential law point of view. But it gives no guidance on how to treat rehypothecated assets from a civil law perspective. This should be clarified, especially in the context of insolvency proceedings.

	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.	