EXPLANATORY MEMORANDUM TO THE MASTER REGULATORY REPORTING AGREEMENT

Dated 19 December 2019

The Association for Financial Markets in Europe (AFME), the Futures Industry Association, Inc. (FIA), the International Capital Market Association (ICMA), the International Securities Lending Association (ISLA) and the International Swaps and Derivatives Association, Inc. (ISDA) (together the "**Trade Associations**") have jointly prepared this explanatory memorandum (the "**Explanatory Memorandum**") to assist in your consideration of the form of the Master Regulatory Reporting Agreement published by the Trade Associations on 19 December 2019 (the "**MRRA**").

Capitalised terms not otherwise defined herein have the meanings specified in the MRRA.

THIS EXPLANATORY MEMORANDUM DOES NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE MRRA OR COMPLIANCE WITH THE LAWS OR REGULATIONS DETAILED IN THE MRRA. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING THE MRRA. THE TRADE ASSOCIATIONS ASSUME NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF THEIR DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

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INTRODUCTION

The MRRA is a template agreement that market participants may find useful as part of the management of their regulatory obligations and/or provision of services to their clients relating to the reporting of the details of certain financial transactions to trade repositories.

Publication and Purpose

The MRRA is jointly published by AFME, FIA, ICMA, ISLA and ISDA after consultation with their respective memberships. It formalises the terms of the reporting relationship between two entities, one of whom is reporting (the Reporting Party) on behalf of the other (the Client or Delegating Party), in order to fulfil either its own regulatory reporting obligations under the mandatory reporting regime, or the Client/Delegating Party's regulatory reporting obligations under the delegated reporting regime. The delegated and mandatory reporting regimes are described below in the '*Regulatory Background*' section of this Explanatory Memorandum.

The MRRA is drafted to cover market participants' regulatory reporting obligations in respect of derivative transactions under EMIR[1] (as amended by the EMIR REFIT Regulation[2]) and/or securities financing transactions ("**SFTs**") under SFTR[3], entered into under standard industry documentation.

Structure

The MRRA consists of a main body (including an introductory section and a section titled '*General Provisions*'), as well as sections on both Delegated Reporting (the '*Delegated Reporting Provisions*') and Mandatory Reporting (the '*Mandatory Reporting Provisions*') followed by two product-specific annexes (the '*Derivatives Annex*' and the '*Securities Financing Transactions Annex*') and template schedules within which the parties can specify details relating to Static Data, any details relating to their reporting operations and procedures, as well as, in circumstances where an entity executes the MRRA in its role as Agent, a list of Clients, and where it executes the MRRA as Fund Manager, a list of Funds.

The MRRA is constructed as a template document. There are provisions throughout each section of the MRRA which the parties will need to bilaterally agree and finalise before entering into the agreement. As noted, the MRRA incorporates wording dealing with both the delegated reporting and mandatory reporting regimes. Where either regime is not applicable to the parties' trading relationship, the parties are encouraged to delete the wording relating to the redundant reporting regime, as found in either the '*Delegated Reporting Provisions*' section or the '*Mandatory Reporting Provisions*' section, as appropriate.

The MRRA caters for regulatory reporting obligations under EMIR and SFTR under separate annexes, and the relevant annexes have been drafted with a view to ensuring they remain effective post-Brexit and that they work independently of each other. Where either EMIR or SFTR is not

[1] Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012, as amended or replaced from time to time.

[2] Regulation (EU) 2019/834 of the European Parliament and of the Council amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories dated 20 May 2019.

[3] Regulation (EU) 2015/2365 of the European Parliament and of the council on transparency of securities financing transactions and of re-use and amending Regulation (EU) No 648/2012 dated 25 November 2015, as amended or replaced from time to time.

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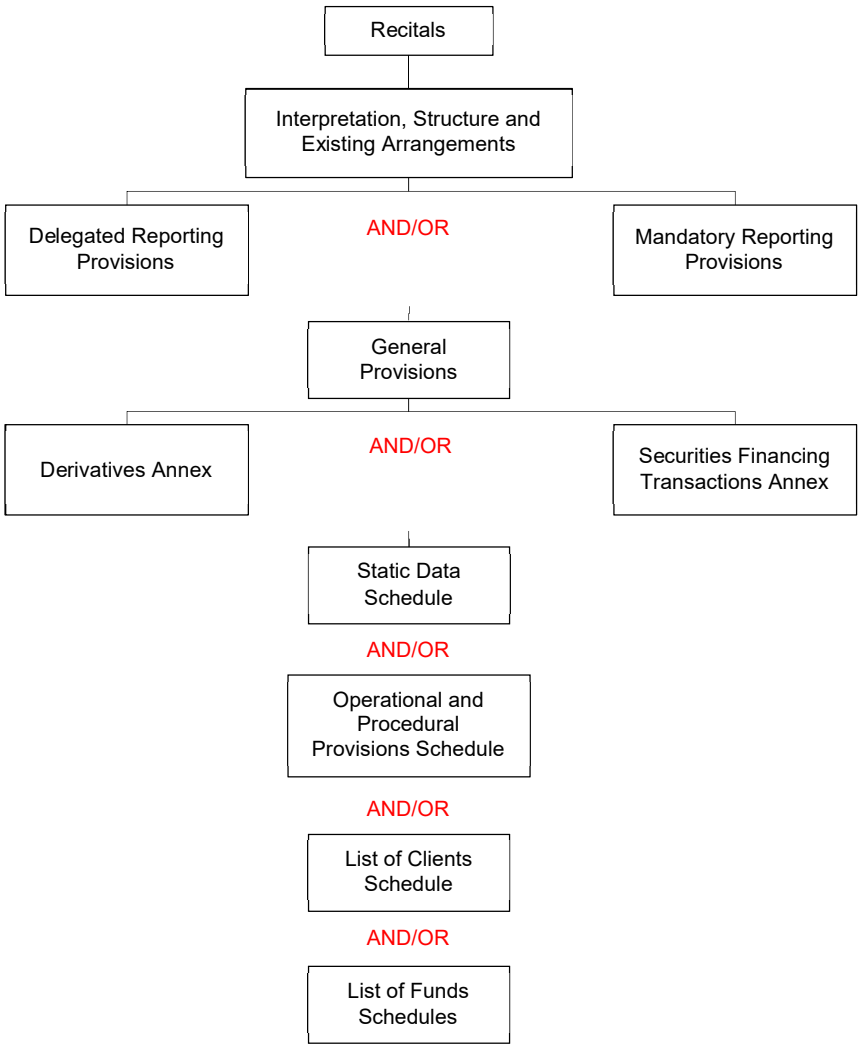
applicable to the parties' trading relationship, the parties are encouraged to delete the wording relating to the redundant regulatory regime and only include those annexes which are relevant.



PRIOR DELEGATED REPORTING DOCUMENTATION

The form and content of the MRRA is based on the ISDA/FIA Reporting Delegation Agreement (the "**ISDA/FIA DRA**"). The ISDA/FIA DRA can be found at: https://www.isda.org/2016/02/09/isdafia-emir-reporting-delegation-agreement/).

The ISDA/FIA DRA was published in 2016, and as such does not cater for the changes to EMIR pursuant to the EMIR REFIT Regulation. The ISDA/FIA DRA did not seek to accommodate the reporting requirements under SFTR, which are, as of the date of this Explanatory Memorandum, still to come into effect.

See the guidance on page 9 below in relation to Section 1.3 (*Existing Reporting Arrangements*) as to how the MRRA can interact with an entity's existing delegated reporting arrangements in respect of EMIR; for example, where it has entered into one or more ISDA/FIA DRAs with clients.

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REGULATORY BACKGROUND

EMIR

Article 9 of EMIR sets out the reporting requirement on counterparties to derivative contracts. Counterparties are required to submit details of derivative contracts (whether OTC or exchange-traded) they have concluded, and of any modification or termination of the contract, to a trade repository registered with the European Securities and Markets Authority ("**ESMA**"), by the following business day (T+1). A trade repository is an organisation that is established to manage data on a secure and confidential basis and is regulated under EMIR.[4]

If an entity is not a financial counterparty ("**FC**") or a non-financial counterparty ("**NFC**") under EMIR, i.e. such entity is not established in the EU or is not a fund managed by an EU AIFM (see the definition below), the reporting requirements under EMIR will not apply to that entity. However, if its counterparty is an FC or an NFC, that counterparty is still required to report its side of the transaction.

EMIR REFIT Regulation

As part of the European Commission's Regulatory Fitness and Performance programme in 2016 (the "**EMIR REFIT**") (and pursuant to Article 85(1) of EMIR), the existing requirements under EMIR were assessed to determine whether they could be simplified and whether it was possible to eliminate instances in which the costs of compliance were considered disproportionate. This led to the preparation of a new regulation, the EMIR REFIT Regulation, which directly amends certain provisions of EMIR. The majority of amendments made to EMIR by way of the EMIR REFIT Regulation took effect on 17 June 2019, being the date of entry into force of the regulation.

The EMIR REFIT Regulation provides that a number of changes to the reporting obligation under EMIR will take effect on 18 June 2020.

New Article 9(1b), (1c) and (1d) introduce new obligations on the management company, manager, or management entity, of a UCITS, AIF or IORP, respectively.

- The management company of an undertaking for collective investment in transferable securities (a "**UCITS**") and the manager of an AIF[5] (the "**AIFM**"), are responsible and legally liable for reporting the details of OTC derivative contracts to which that UCITS or AIF is a counterparty, as well as for ensuring the correctness of the details reported.
- Where an institution for occupational retirement provision ("**IORP**") does not have a legal personality under national law, the authorised entity that manages and acts on behalf of that IORP is responsible and legally liable for reporting the details of OTC derivative contracts to which that IORP is a counterparty. It must also ensure that the details of the reported information are correct.

[4] The list of ESMA-registered trade repositories, including the derivatives asset classes which can be reported to such a trade repository can be found at: https://www.esma.europa.eu/supervision/trade-repositories/list-registered-trade-repositories.

[5] "AIFs" are defined in point (a) of Article 4(1) of the AIFMD (Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers) as non-UCITS collective investment undertakings which raise capital from investors with a view to investing it according to a defined policy for the benefit of those investors. Entities should consult their legal advisers if the status of a fund is uncertain.

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New Article 9(1a) provides that, when transacting with an NFC which is below the relevant clearing threshold for all asset classes (an "**NFC-**")[6], an FC will be "solely responsible, and legally liable, for reporting on behalf of both counterparties" the details of OTC derivative contracts, as well as ensuring the correctness of the details reported. This is referred to in the MRRA as 'Mandatory Reporting'.

The MRRA is not designed to cater for any agreements that may need to be put in place between a Fund Manager and a Fund to facilitate the reporting by the Fund Manager, pursuant to Article 9(1b)-(1d), of derivative transactions of the Fund. Where a Fund Manager has the responsibility to report transactions of a Fund, the Fund Manager can use the MRRA to delegate its reporting function to the Reporting Party.

The MRRA does not specifically address the scenario where a UCITS or AIF is established solely for the purposes of serving one or more employee share purchase plans and is therefore an NFC rather than an FC for the purposes of EMIR. See, further, page 20 below.

Where Mandatory Reporting does not apply, the ability for parties to delegate their reporting responsibility under Article 9 of EMIR continues to apply. In the MRRA, this mode of reporting is referred to as 'Delegated Reporting'.

In a Mandatory Reporting context, new Article 9(1a) requires the NFC- to provide the FC "with the details of the OTC derivative contracts concluded between them, which the financial counterparty cannot be reasonably expected to possess". It is the responsibility of the NFC- to ensure that "those details are correct".

Article 9(1a) also provides that where an NFC- has already invested in a reporting system prior to this Mandatory Reporting obligation becoming applicable, it may opt out of mandatory reporting and continue to report on its own behalf. If it chooses to do this, it must inform those FCs with whom it transacts of its decision prior to transacting with the FC.

The 'Mandatory Reporting Opt-Out' election in the Derivatives Annex of the MRRA is intended to reflect the right of the NFC- to retain responsibility for reporting certain transactions under Article 9(1a) of EMIR. However, it is not envisaged that the MRRA would be used for the purpose of an NFC- completely opting-out from the FC having any reporting responsibility for derivative transactions between the parties.

The obligation for an FC to report on behalf of an NFC- is expressed in Article 9(1a) of EMIR to apply only to OTC derivatives, and not to exchange-traded derivatives. This would appear consistent with the European Commission's original legislative proposal for the EMIR REFIT Regulation[7], which provided in respect of exchange-traded derivatives that CCPs (central clearing counterparties) would undertake the obligation to report such derivatives. This provision was not included in the final text of the EMIR REFIT Regulation. As a consequence, FCs that enter into both OTC and exchange-traded derivatives with NFC-s may find that they have to adopt two different approaches to reporting, with Mandatory Reporting applying to their OTC derivatives but not to their exchange-traded derivatives.

[6] Whether an NFC will be below the clearing threshold, and therefore an NFC-, is determined by reference to the entity's aggregate month-end average position at group level in OTC derivative contracts (excluding any transactions that are for hedging purposes) pursuant to a calculation made at least annually by reference to month-end data for the previous 12 months. Where the result of that calculation exceeds any one or more of the clearing thresholds set out in Article 11 of Commission Delegated Regulation (EU) No 149/2013, the NFC will be an NFC+. If no threshold is exceeded, the relevant entity will be an NFC-.

[7] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A208%3AFIN.

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The reporting requirements under EMIR are made more complex by the fact that the definition of an OTC derivative under EMIR includes exchange-traded derivatives executed on non-equivalent non-EU trading venues (equivalence of a third country market is determined in accordance with Article 2a of EMIR). This means that an FC will be responsible and legally liable for reporting the details of exchange-traded derivatives on such venues on behalf of an NFC-.

The 'Mandatory Reporting Opt-Out' in the Derivatives Annex of the MRRA may be useful in this regard; the NFC- may choose to opt-out of Mandatory Reporting in respect of exchange-traded derivatives categorised as OTC Derivatives. The Delegated Reporting Provisions could then apply both to Exchange-Traded Derivatives and exchange-traded derivatives categorised as OTC Derivatives. The Mandatory Reporting Provisions would apply only to any other OTC Derivatives. This may assist with addressing the practical difficulties associated with different reporting models for Exchange-Traded Derivatives and venue-traded derivatives that are categorised as OTC Derivatives under EMIR. Market participants should be aware that further clarification may be provided by regulators on the scope of the mandatory reporting obligation.

The information that the Reporting Party will need to report for itself and its counterparty is set out in Tables 1 and 2 of the EMIR reporting annexes[8]. Table 1 details 'Counterparty Data', which includes counterparty ID, whether, in the case of an NFC, the transaction is a "hedging" transaction that does not count towards meeting the clearing threshold, mark-to-market value of the contract and value of collateral. Table 2 details 'Common Data'. This table includes maturity date, termination date, trade ID and price/rate. The Derivatives Annex of the MRRA includes various elections in respect of this data.

SFTR

Article 4 of SFTR sets out the reporting requirement on counterparties to SFTs. Counterparties are required to submit details of SFTs they have concluded, and of any modification or termination of the SFT, to a trade repository registered with ESMA, by the following business day (T+1). The reporting obligation is imposed on counterparties to SFTs established either in the EU, or in a third country where the SFT is concluded in the course of the operations of a branch of that counterparty in the EU.[9]

The reporting obligation under Article 4 will be phased in over a nine-month period, starting from 11 April 2020[10] and ending 11 January 2021 (please see the timeline below). Different phase-in dates apply in respect of different types of entities.

- For an investment firm or a credit institution, the reporting obligation will apply from 14 April 2020.[11]

[8] The annexes to (i) Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 and published 23 February 2013 in the Official Journal of the European Union and (ii) Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 and published 21 December 2012 in the Official Journal of the European Union, as amended or replaced from time to time.

[9] Article 2(1)(a) of SFTR.

[10] Being 12 months after the date of entry into force of the Commission Delegated Regulation (EU) 2019/356 of 13 December 2018, adopted pursuant to Article 4(9) of SFTR.

[11] This reporting obligation phase-in relates to transactions concluded on or after 11 April 2020. However, as 11 April 2020 is Easter Saturday, the effective 'go-live' date will be 14 April 2020.

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- For a central counterparty or a central securities depositary, the reporting obligation will apply from 13 July 2020.[12]
- For an insurance undertaking, a reinsurance undertaking, a UCITS, an AIF, or an IORP, the reporting obligation will apply from 12 October 2020.[13]
- For non-financial counterparties, the reporting obligation will apply from 11 January 2021.

If one counterparty is in-scope of the SFTR reporting obligation and the other is not (for example, due to the phase-in timetable or because the second entity is a third country entity not acting in the course of operations of an EU branch), the first counterparty may, in order to make its own reports, need to obtain data from the second entity and require it to waive any confidentiality requirements as regards disclosing that data to the relevant trade repository[14].

Article 4 also provides, in a similar way to EMIR, that the counterparty subject to the reporting obligation may delegate its reporting obligation, while retaining responsibility under SFTR for the details of the report. The MRRA provides for this delegation by way of Delegated Reporting and SFT-specific elections in the Securities Financing Transactions Annex.

Alongside providing counterparties with the ability to delegate their reporting obligation, Article 4 of SFTR also sets out a mandatory reporting requirement. Where one of the counterparties to an SFT is an FC under SFTR[15], and the other counterparty is an NFC under SFTR that is a small or medium-sized undertaking for accounting purposes[16] (an "**NFC- SME**"), the FC is responsible for reporting on behalf of that NFC- SME, as well as on its own behalf. The MRRA caters for this through the Mandatory Reporting Provisions and SFT-specific elections in the Securities Financing Transactions Annex. Note that the mandatory reporting obligation on FCs will not be relevant until 11 January 2021, being the reporting obligation phase-in date for NFCs. Unlike EMIR, SFTR does not provide for an NFC- SME to opt-out from mandatory reporting by the FC and to make its own reports.

Article 4 also provides that the management company of a UCITS and the AIFM will be responsible for reporting the details of SFTs to which the UCITS or AIF, respectively, is a counterparty.[17] This responsibility will apply from 12 October 2020.

The MRRA is not designed to cater for any agreements that may need to be put in place between a Fund Manager and a Fund to facilitate the reporting by the Fund Manager, pursuant to Article 4, of

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[12] This reporting obligation phase-in relates to transactions concluded on or after 11 July 2020. However, as 11 July 2020 is a Saturday, the effective 'go-live' date will be 13 July 2020.

[13] This reporting obligation phase-in relates to transactions concluded on or after 11 October 2020. However, as 11 October 2020 is a Sunday, the effective 'go-live' date will be 12 October 2020.

[14] The position is the same under EMIR, but in-scope counterparties should already have arrangements in place to facilitate reporting of counterparty data.

[15] Under Article 3 of SFTR, this concept includes investment firms, credit institutions, insurance or reinsurance undertakings, UCITS, AIFs managed by AIFMs, IORPs, central counterparties, and central securities depositories, as well as third country entities which would require authorisation or registration in the same way as any of the entities listed above if they were established in the EU. However, paragraph 5.3.2 of the draft ESMA Guidelines for reporting under Articles 4 and 12 of SFTR (the draft ESMA Guidelines can be found at: https://www.esma.europa.eu/sites/default/files/library/esma70-151-1985_consultation_paper_guidelines_on_reporting_under_sftr.pdf) indicate that reporting cannot be mandatorily allocated to a third country entity (absent an equivalence determination under Article 21).

[16] Article 4(3) sets out the definition of an NFC- SME, which means a non-financial counterparty which on its balance sheet date does not exceed at least two of the following three thresholds: balance sheet total of €20,000,000; net turnover of €40,000,000; average number of employees during the financial year, 250, each as set out in Article 3(3) of Directive 2013/34/EU of the European Parliament and of the Council.

[17] Article 4(3) of SFTR. This is generally accepted as applying to an AIFM only where authorised in accordance with AIFMD (Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers).

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SFTs of the Fund. Where a Fund Manager has the responsibility to report transactions of a Fund, the Fund Manager can use the MRRA to delegate its reporting function to the Reporting Party.

Certain SFTs entered into prior to the relevant reporting start date, which remain in force 180 days after that date, are also reportable, with the cut-off date for reporting being 190 days after that date.[18] This is generally referred to as the 'backloading' obligation.

Details that need to be reported under SFTR are provided in Tables 1, 2, 3 and 4 of the SFTR Reporting Annexes[19]. They include, among other details, 'counterparty data' in Table 1 (for example, counterparty ID), 'loan and collateral' data in Table 2 (such as unique reference assigned to the SFT in order to identify the trade and type of SFT), 'margin data' in Table 3 with respect to cleared SFTs (such as event date and initial margin posted) and 're-use, cash reinvestment and funding sources data' in Table 4.

Brexit

In light of the current status of the proposed withdrawal of the UK from the EU, the MRRA has been drafted so as to work post-Brexit. References to the 'UK EMIR Reporting Regime' and the 'UK SFTR Reporting Regime' are intended to align the MRRA with a post-Brexit regulatory landscape. The parties should, however, consider consulting their own independent professional advisers on these issues, and should have regard to any future legislation and/or regulatory guidance.

[18] Article 4(1)(a) of SFTR.

[19] The annexes to Commission Delegated Regulation (EU) No 2019/356 of 13 December 2018 and published 22 March 2019 in the Official Journal of the European Union and Annex I to Commission Implementing Regulation (EU) 2019/363 of 13 December 2018 and published 22 March 2019 in the Official Journal of the European Union, as amended or replaced from time to time.

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GUIDANCE

Parties and Recitals

The MRRA may be executed by an Agent on behalf of one or more Clients and/or a Fund Manager acting as manager of one or more Funds, in which case a separate MRRA may be deemed entered into between the Reporting Party and each Client and/or between the Reporting Party and Fund Manager with respect to each Fund.

In certain circumstances, a party may wish to execute the MRRA as Agent on behalf of a Fund (as the Client) and separately as Fund Manager with respect to the same Fund. For example, where a Fund is trading OTC Derivatives and Exchange-Traded Derivatives, the Fund Manager will only be bound to report on behalf of the Fund in relation to OTC Derivatives, with the Fund Manager reporting on behalf of the Fund as Agent in respect of Exchange-Traded Derivatives. The MRRA caters for such a situation by allowing the document to be executed in different capacities, with different MRRAs being deemed to apply.

Interpretation, Structure and Existing Arrangements

Section 1.2 (*Interpretation*)

This section sets out the structure of the MRRA. It provides that the MRRA comprises a main body together with one or more of the Annexes as well as any applicable Schedules that the parties attach. The terms of the main body of the MRRA, and the Schedules, if applicable, will be supplemented and amended by the applicable Annex(es), and these supplemented and amended terms will apply to the Relevant Transactions which are identified in the Annex(es). Where there is any inconsistency between the main body of the MRRA or a Schedule and an Annex, the Annex will prevail.

There are also various options in square brackets in Section 1.2.3 that provide for how an Agent or Fund Manager may make updates to a Schedule which includes a list of Clients or a list of Funds, and when such updates are deemed effective. The wording provides that the Reporting Party will only be obliged to report transactions in respect of any new Client or Fund once the agreed steps have been completed in accordance with the provision (e.g. written consent from the Reporting Party and/or completion of any necessary onboarding steps).

Section 1.3 (*Existing Reporting Arrangements*)

This section of the MRRA includes optional wording in square brackets which the parties can include in order to clarify how the MRRA will interact with any other master regulatory reporting agreement or delegated reporting agreement which the parties have previously entered into for the purposes of dealing with EMIR or SFTR reporting. If the optional wording is included, the MRRA will supersede any previous EMIR or SFTR reporting agreement. The parties are provided with the opportunity to agree alternative wording in the MRRA or otherwise to remove Section 1.3.1.

This section also provides that the MRRA only has a bearing on those transactions that are identified as Relevant Transactions in any applicable Annex(es). Any prior reporting agreements entered into in respect of transactions that are not Relevant Transactions will not be affected by the MRRA.

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Whether or not Section 1.3.1 is included, entry into the MRRA would not affect any existing agreements relating to reporting of transactions reported under Article 26 of MiFIR.[20]

Delegated Reporting Provisions

The MRRA is constructed such that the parties may agree to delete the Delegated Reporting Provisions section from the MRRA and only include the Mandatory Reporting Provisions (or vice versa). Where the parties have indicated that Delegated Reporting is applicable to certain or all Relevant Transactions within Paragraph 3 (*Relevant Transactions and Related Elections*) of an Annex, then the parties should retain the Delegated Reporting Provisions.

If the Client is an NFC- or NFC- SME and therefore could become an NFC+ or NFC other than an NFC- SME in future, and an election for 'Automatic Transition to Delegated Reporting' has been made, the Delegated Reporting Provisions should also be retained.

Section 2 (*Delegated Reporting*) of the Delegated Reporting Provisions

Section 2.1 provides that the Delegating Party – being the Client or Fund Manager that delegates its reporting obligation to the Reporting Party – requires, appoints and authorises the Reporting Party to report on its behalf, and the Reporting Party agrees to such reporting in respect of each Relevant Transaction (which refers to a transaction within a specific pool of transactions identified in an Annex).

To enable the Reporting Party to fulfil its responsibilities in respect of the Delegating Party's Reporting Obligation, various sub-sections are included.

- The Delegating Party is required to deliver certain Counterparty Data to the Reporting Party and represents that the data is, and continues to be, "true, accurate and complete in every material respect". The Reporting Party may also rely on the Counterparty Data without investigation. Optional wording provides for the parties to specify whether the Counterparty Data includes Static Data (i.e. Counterparty Data which is expected to change infrequently or at least not on a trade-by-trade basis) as separately set out in a Schedule to the MRRA. If the Delegating Party fails to provide Counterparty Data, the Reporting Party will be under no obligation to submit such data on its behalf before the Reporting Deadline.
- Optional wording is included in respect of when the Delegating Party must deliver the Counterparty Data, with the options being either to deliver it "in time" for the Reporting Party to report by the Reporting Deadline or within a specific time period set out in a Schedule relating to 'Operational and Procedural Provisions'.
- The Delegating Party also agrees to update any Static Data to ensure it remains "true, accurate and complete in every material respect" and notify the Reporting Party of any such change. The parties will need to agree the point at which any update to Static Data is effective. They can do so either in a relevant Annex or in a Schedule relating to 'Operational and Procedural Provisions'.

In respect of the 'Unique Trade Identifier' ("**UTI**"), Section 2.3 provides flexibility in respect of whether the Reporting Party may or shall generate the trade identifier depending on the relationship between Delegating Party and Reporting Party and their respective responsibilities. Where the Reporting

[20] Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

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Party is an agent lender, for example, the UTI may in practice be generated by the relevant borrower rather than the agent lender.

Section 2.4 indicates that the Delegating Party will be entitled to report the Relevant Data on its own behalf where the Reporting Party does not or will not report the Relevant Data by the Reporting Deadline.

Section 2 also includes optional wording pursuant to which the parties can specify documentation that will need to be received by the Reporting Party before it undertakes Delegated Reporting on behalf of the Delegating Party. This documentation can be listed in an additional Schedule attached to the MRRA. There is, further, an option for the parties to agree operational and procedural reporting conditions in a Schedule relating to 'Operational and Procedural Provisions' and to state that they are bound by such conditions.

The parties should consider the details they may want to exchange in any such Schedule. For example, if they consider it appropriate, the parties may seek to address how trade repository rejections of submitted data should be communicated to the Delegating Party and responsibilities for annual renewal of the parties' legal entity identifier ("**LEI**").[21] Any requirements arising from any applicable outsourcing rules or guidelines applicable to the Delegating Party could also be addressed in any such Schedule.

Section 3 (*Correction of Errors*) of the Delegated Reporting Provisions

Optional wording is included in Section 3, which requires both the Delegating Party and the Reporting Party to notify the other party of material errors in any Relevant Data and to make an effort to resolve any errors.

As regards the ability of the Delegating Party to monitor data reported on its behalf, it may open an account with a relevant trade repository in order to access such data. Further guidance on how the Delegating Party can do so may be provided by the Reporting Party, for example in a Schedule relating to 'Operational and Procedural Provisions'.

Section 4 (*Use of Third Parties*) of the Delegated Reporting Provisions

Section 4 provides that the Delegating Party or the Reporting Party may use the services of a Third Party Service Provider in relation to its responsibilities under the MRRA.

There is no requirement for one party to notify the other of any appointment of a Third Party Service Provider, but the Reporting Party must use reasonable care in selecting a Third Party Service Provider. The parties are provided with optional wording in square brackets which, if included, will impose an obligation on the Reporting Party to monitor the services provided to it by a Third Party Service Provider. The parties may need to tailor this language, and the provision as a whole, in light of any additional outsourcing rules or guidelines applicable to the Delegating Party.

Depending on the type of Third Party Service Provider used, the parties also may want to consider whether further language should be included relating to the level of service provided by the Third Party Service Provider.

[21] Both of these issues were described in the letter from the Central Bank of Ireland published on 20 February 2019, which can be found at: https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/securities-markets/emir-regulation/guidance/for-the-attention-of-the-board---emir-reporting---central-bank-of-ireland.pdf.

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Section 5 (*Delegating Party Acknowledgement*) of the Delegated Reporting Provisions

The Delegating Party provides a number of acknowledgements in Section 5. Of particular importance is the Delegating Party's acknowledgement that it will remain responsible for complying with its EMIR or SFTR reporting obligations generally.

Section 6 (*Liability*) of the Delegated Reporting Provisions

This liability provision generally reflects the position in the ISDA/FIA DRA. The Reporting Party may prefer to provide a restricted cap on liability, which would entail adding wording in the penultimate paragraph.

Section 7 (*Force Majeure*) of the Delegated Reporting Provisions

Pursuant to this section, the Reporting Party's obligations under the MRRA are suspended for as long as a Force Majeure Event is continuing.

This section includes optional wording which provides that the Reporting Party will perform its previously suspended obligations once the Force Majeure Event is over, unless otherwise agreed and unless the Delegating Party confirms that it has itself reported the affected transactions. Where the parties prefer that suspended reporting obligations should not be performed following the curing of a Force Majeure Event, this square bracketed language can be removed.

The square bracketed language indicates that previously suspended obligations will only need to be performed "where applicable", i.e. that back-reporting of historic valuation data will not be necessary.

Section 8 (*Indemnity*) of the Delegated Reporting Provisions

This indemnity provision generally reflects the position in the ISDA/FIA DRA, with the addition of wording in Section 8.1.2 indemnifying the Reporting Party in the event of the Delegating Party's failure to provide information required by the Reporting Party to fulfil its reporting obligations and wording in 8.1.3 relating to corrections made by the Reporting Party.

Section 9 (*Amendment and Termination*) of the Delegated Reporting Provisions

The parties may wish to consider further amendments to Section 9.1 such as permitting the Reporting Party to withdraw a rejected amendment within a set period.

Section 9.2 provides that, as at effective termination of the MRRA, transactions specified to be Relevant Transactions in one or more Annexes to the MRRA will no longer be considered as such and the Reporting Party will no longer have any obligations in respect of those transactions.

This language will mean that, "unless otherwise agreed between the parties", the Reporting Party will not continue to provide Delegated Reporting on behalf of the Delegating Party in respect of outstanding transactions which are subsequently modified or terminated; the Delegating Party itself or any new reporting party it appoints would be obliged to report any modification or termination of outstanding transactions. The language "unless otherwise agreed" caters for a scenario in which the parties prefer that Delegated Reporting remains applicable in respect of outstanding transactions: for example, where an agent lender continues to report any modification or termination of outstanding loans arranged by that agent lender.

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Mandatory Reporting Provisions

The MRRA is constructed such that the parties may agree to delete the Mandatory Reporting Provisions section from the MRRA and only include the Delegated Reporting Provisions (or vice versa). Where the parties have indicated that Mandatory Reporting is applicable to certain or all Relevant Transactions within Paragraph 3 (*Relevant Transactions and Related Elections*) of an Annex, then the parties should retain the Mandatory Reporting Provisions.

If the Client is an NFC+ or an NFC other than an NFC- SME and therefore could become an NFC- or NFC- SME in future, and an election for 'Automatic Transition to Mandatory Reporting' has been made, the Mandatory Reporting Provisions should also be retained.

Section 2 (*Mandatory Reporting*) of the Mandatory Reporting Provisions

Unlike the Delegated Reporting Provisions, the Mandatory Reporting Provisions do not contain a section addressing the Reporting Party's obligation to report the Relevant Data in respect of the Relevant Transactions. This obligation rests on the Reporting Party pursuant to either EMIR or SFTR. Section 2 instead include various sections intended to regulate the relationship between the NFC- or NFC- SME (as applicable) as Client, and the FC as Reporting Party, and facilitate the Reporting Party in fulfilling its regulatory obligations.

- The Client agrees to deliver certain Counterparty Data to the Reporting Party. The Client's obligation to deliver the Counterparty Data to the Reporting Party reflects the obligation of the NFC- under EMIR to provide data that the FC "cannot reasonably be expected to possess" (identified, in this case, as the Counterparty Data). Although there is no such provision in SFTR, as drafted, this section can be used in the context of both derivatives and SFTs. Given the counterparty types with respect to which Mandatory Reporting applies, it is less likely that there will be a significant number of instances in which Mandatory Reporting is applicable in respect of SFTs.

- The Client represents that the data is, and continues to be, "true, accurate and complete in every material respect". The Reporting Party may rely on the Counterparty Data without investigation. These elements reflect that, under EMIR, the Client is required to ensure that the data it provides to the Reporting Party for reporting purposes is correct. Optional wording provides for the parties to specify whether the Counterparty Data includes Static Data (i.e. Counterparty Data which is expected to change infrequently or at least not on a trade-by-trade basis) as separately set out in a Schedule to the MRRA. Unlike the Delegated Reporting Provisions, if the Client fails to provide Counterparty Data, it will be in breach of its obligations under the MRRA, but the Reporting Party will remain subject to its regulatory reporting obligation.

- Optional wording is included in respect of when the Client must deliver the Counterparty Data, with the options being either to deliver it "in time" for the Reporting Party to report by the Reporting Deadline or within a specific time period set out in a Schedule relating to 'Operational and Procedural Provisions'.

- The Client also agrees to update any Static Data to ensure it remains "true, accurate and complete in every material respect" and notify the Reporting Party of any such change. Unlike the Delegated Reporting Provisions, the parties are not required to agree the point at which any update to Static Data becomes effective.

- If the Client fails to provide Counterparty Data, Section 2.1.4 of the Mandatory Reporting Provisions indicates that the Reporting Party has discretion to determine the values it will submit to the Relevant Trade Repository in order to comply with its regulatory Reporting Obligation. In

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doing so, the Reporting Party can submit 'default values' to the Relevant Trade Repository, which will likely be the most recent data the Reporting Party holds in the absence of current and accurate Relevant Data. Section 2.1.4 indicates that the Reporting Party will not be liable to the Client for the incompleteness or inaccuracy of values it submits, nor will it be required to subsequently correct any such data submitted pursuant to this discretion.

In respect of the UTI, Section 2.2 provides flexibility in respect of whether the Reporting Party may or shall generate the trade identifier depending on the relationship between the Delegating Party and the Reporting Party and their respective responsibilities. Where the Reporting Party is an agent lender, for example, the UTI may in practice be generated by the relevant borrower rather than the agent lender.

There is also an option for the parties to agree operational and procedural reporting conditions in a Schedule relating to 'Operational and Procedural Provisions' and to state that they are bound by such conditions. The parties should consider the details they may want to exchange in any such Schedule.

Section 3 (*Liability*) of the Mandatory Reporting Provisions

An abbreviated liability provision is included at Section 3 as an optional provision in square brackets.

Section 3 is expressed to apply only to the extent permitted by applicable law. This may depend on the specific circumstances in which the MRRA is entered into, the relationship between the parties and the particular regulator(s) with oversight of the Reporting Party. The Reporting Party should consider consulting its own independent professional advisers in respect of these issues.

Section 4 (*Indemnity*) of the Mandatory Reporting Provisions

An abbreviated indemnity provision is included at Section 4 as an optional provision in square brackets. Pursuant to this section, the Client indemnifies the Reporting Party against any loss caused: (i) by any information provided by the Client to the Reporting Party, or any failure of the Client to provide information reasonably required by the Reporting Party; and (ii) by the Reporting Party having to correct previously submitted Relevant Data.

Section 4 is expressed to apply only to the extent permitted by applicable law. This may depend on the specific circumstances in which the MRRA is entered into, the relationship between the parties and the particular regulator(s) with oversight of the Reporting Party. The Reporting Party should consider consulting its own independent professional advisers in respect of these issues.

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General Provisions

Section 1 (*Transition between Reporting Models*) of the General Provisions

Each of the Derivatives Annex and Securities Financing Transactions Annex includes an election whereby the parties can select that 'Automatic Transition to Delegated Reporting' and/or 'Automatic Transition to Mandatory Reporting' applies and specify to which Relevant Transactions the mechanism will apply.

The mechanism within the Annexes also includes language to provide for Brexit. Where Mandatory Reporting applies prior to Brexit but, following Brexit, the Client and the Reporting Party are no longer both in the same jurisdiction (i.e. both in the EU or in the UK), the Mandatory Reporting Provisions will no longer apply.[22] Optional wording currently in square brackets can be included to also provide that, in such circumstances, a Delegated Reporting Transition Date will occur, and the Reporting Party will undertake Delegated Reporting on the terms set out in the Delegated Reporting Provisions.

The parties should include the optional provision in Section 1 if they have selected that one or other of 'Automatic Transition to Delegated Reporting' and 'Automatic Transition to Mandatory Reporting' shall apply in an applicable Annex. The parties should also include both the Delegated Reporting Provisions and the Mandatory Reporting Provisions in the MRRA in such circumstances.

While the parties will have indicated that a certain type of reporting is applicable to certain or all Relevant Transactions within Paragraph 3 (*Relevant Transactions and Related Elections*) of each applicable Annex, this provision has the effect that, on a specific date (the Delegated Reporting Transition Date or the Mandatory Reporting Transition Date, as applicable), the relevant reporting regime will move from Mandatory Reporting to Delegated Reporting, where the Reporting Party either receives notice or otherwise becomes aware ("otherwise becomes aware" is in square brackets) that the Client's regulatory status has changed such that the Reporting Party "ceases to be required by relevant law or regulation to report Relevant Transactions on behalf of the Client" (i.e. the Client is no longer an NFC- or NFC- SME), or from Delegated Reporting to Mandatory Reporting, where the Reporting Party either receives notice or otherwise becomes aware ("otherwise becomes aware" is in square brackets) that the Client's regulatory status has changed such that the Reporting Party "is subsequently required by relevant law or regulation to report Relevant Transactions on behalf of the Client" (i.e. the Delegating Party has become an NFC- or NFC- SME).

Any transition to Delegated Reporting or Mandatory Reporting will be in respect of Relevant Transactions concluded *on or after* the relevant transition date. This is of particular relevance in an EMIR context, as in-scope entities are already subject to reporting obligations under Article 9 of EMIR but are not yet subject to the mandatory reporting requirement. There is a related but wider question as to whether, if mandatory reporting becomes applicable to a counterparty relationship, modifications to, or terminations of, derivative transactions concluded between the counterparties before 18 June 2020 would also fall under the mandatory reporting framework. Article 9(1a) of EMIR, however, is expressed only to apply to OTC derivative contracts concluded on or after 18 June 2020, such that no mandatory reporting obligation should exist with respect to legacy transactions. The parties should, however, consider consulting their own independent professional advisers on this point, and should have regard to any future regulatory guidance on this matter.

[22] In the case of SFTR, and where branches are involved, this interpretation is based on the draft ESMA Guidelines for reporting under Articles 4 and 12 of SFTR (paragraph 5.3.2) as mentioned in footnote 15.

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This section does not contemplate transition between the Client reporting on its own behalf in respect of all Relevant Transactions and Mandatory Reporting. Where an NFC- has decided to utilise its right to opt-out of the mandatory reporting regime, and has documented this outside of the MRRA, then, where it revokes its opt-out such that it will fall within the mandatory reporting regime, the FC counterparty should seek to agree to enter into the MRRA with the NFC-.

Similarly, if a Client was an NFC+ (or an NFC other than an NFC- SME) and did not delegate its reporting responsibility to its FC counterparty, and the Client becomes an NFC- or NFC- SME, the FC counterparty should seek to agree to enter into the MRRA with the NFC- or NFC- SME.

Section 2 (*Confidentiality Waiver*) of the General Provisions

This confidentiality waiver generally reflects the position in the ISDA/FIA DRA, with the addition of wording providing that disclosure of information to the counterparty to a Relevant Transaction is acceptable in the situation where the Reporting Party or its affiliate is not the counterparty to a Relevant Transaction with a Client or Fund. This language is intended to cover off a situation where an agent lender as Reporting Party may need to provide information on the Client to the borrower.

The parties have the option in each relevant Annex to select whether Section 2.1.1 or 2.1.2 of the General Provisions is applicable, or whether an alternative confidentiality waiver should be incorporated. Where the parties elect to apply Section 2.1.2 of the General Provisions, they will need to agree whether to include the optional wording in square brackets.

Section 3 (*Representations*) of the General Provisions

Each party to the MRRA makes a number of representations. There may be some overlap between representations such as 'Absence of Litigation' at Section 3.2 and 'Non-Reliance' at Section 3.4 and the ISDA Master Agreement or the parties' core agreement. These provisions were included in the ISDA/FIA DRA and have similarly been included in the MRRA. Parties can delete any representations which they consider irrelevant.

Section 4 (*Miscellaneous*) of the General Provisions

These provisions mirror similar provisions included in the ISDA/FIA DRA.

Section 5 (*Notices*) of the General Provisions

The parties may want to consider whether the manner in which the parties can give notice should be made stricter in the 'Notices' provision in Section 5, and equally whether the way in which the parties can effect an amendment to the MRRA pursuant to Section 4.3 (*Amendments*) of the General Provisions should be made stricter.

Section 6 (*Execution as Agent*) of the General Provisions

This section mirrors a similar provision included in the ISDA/FIA DRA.

Section 7 (*Execution as Fund Manager*) of the General Provisions

This section mirrors the wording in Section 6 (*Execution as Agent*) of the General Provisions. A Fund Manager should not, however, require a power of attorney or any other form of authorisation from a Fund, since the Fund Manager is fulfilling its own reporting obligation rather than arranging for the Fund to make reports.

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Section 8 (*Governing Law and Jurisdiction*) of the General Provisions

The MRRA is stated to be governed by English law in Section 8.1.

Section 8.2 is drafted such that the parties will be required to select whether the exclusive jurisdiction of the English courts or the non-exclusive jurisdiction of the English courts will apply. Entities may have different preferences in respect of jurisdictional exclusivity and this flexibility is intended to address this.

Section 8.3 also allows the parties to appoint a Process Agent. The parties will identify the Process Agent relevant to any of the Reporting Party, the Client and/or the Fund Manager in each applicable Annex.

Section 9 (*Definitions and Construction*) of the General Provisions

Section 1 (*Transition between Reporting Models*) of the General Provisions, refers to the defined terms 'Delegated Reporting Transition Date' and 'Mandatory Reporting Transition Date'.

The parties will need to agree on whether, for a transition to Mandatory Reporting or Delegated Reporting to occur, there should be a period between receipt of notice of any regulatory status change and the date of transition itself, as well as the duration of any such period. The parties should also consider whether the Reporting Party's awareness of a change to the Delegating Party/Client's regulatory status should be sufficient to effect a transition in the absence of any notification from the Delegating Party/Client. Where the wording "or otherwise becomes aware" is deleted, the Reporting Party must continue, as a matter of contract, to apply Mandatory Reporting or Delegated Reporting, as applicable, until it is notified of a change in its Delegating Party/Client's status, at which point it can transition to the other form of reporting, despite knowing of the regulatory change prior to such notification.

Section 9.2 provides that references in the MRRA to a provision of law will be to a provision as amended from time to time. The parties should consider whether they will need to monitor any regulatory changes or future legislation to ensure the MRRA is compatible with any new or amended laws or regulations. The parties should consider consulting their own independent professional advisers on these issues.

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Derivatives Annex

The Derivatives Annex is an optional annex that the parties should include if they are in-scope of EMIR reporting obligations. The Derivatives Annex sets out a number of derivatives-specific provisions, which include both checkbox elections and definitions. The parties should consider whether further provisions are required in the Derivatives Annex, and if they are, add these in Paragraph 15 (*Other Provisions*) of the Derivatives Annex. Where paragraphs in this Annex are not relevant, the parties can remove them.

Paragraph 1 (*Effective Date*) of the Derivatives Annex

An 'effective date' concept has been included in the Derivatives Annex to ensure maximum flexibility. The parties could execute the MRRA but provide that the effective date of the Derivatives Annex is a later date; the form of reporting described as applicable in Paragraph 3 (*Relevant Transactions and Related Elections*) of the Derivatives Annex would only be applicable from the specified effective date. This mechanism may be useful where an entity (likely the Reporting Party) is conducting outreach with a number of clients and attempting to agree a form of MRRA with each one prior to the date that the mandatory reporting obligation comes into force. Also, Paragraph 3 (*Relevant Transactions and Related Elections*) of the Derivatives Annex can be used to specify that reporting of the Relevant Transactions will only apply to transactions concluded on or after a particular date. In particular, Mandatory Reporting should only apply from 18 June 2020 at the earliest.

This paragraph also includes language which seeks to deal with EMIR following Brexit. It is envisaged that the MRRA will be sufficient for the purposes of any UK reporting regime post-Brexit which is equivalent to EMIR, provided that the UK EMIR Reporting Regime is substantially similar to the EMIR reporting regime.

Paragraph 2 (*Applicable Reporting Regime(s) for Client or Fund*) of the Derivatives Annex

This optional paragraph is included in the MRRA in square brackets. Some entities may prefer not to specify the Applicable Reporting Regime(s) in the MRRA itself and may prefer to delete this paragraph.

As the relevant footnote indicates, where the MRRA relates to multiple Clients and/or Funds, the parties should consider using the relevant Schedule to specify the Applicable Reporting Regime(s) for each Client and/or Fund.

Paragraph 3 (*Relevant Transactions and Related Elections*) of the Derivatives Annex

This paragraph sets out, in template tabular format, the scope of transactions covered by the MRRA.

The transactions covered by one or both of Delegated Reporting and Mandatory Reporting will be those Relevant Transactions as set out in column A (Transaction type) of the table, which satisfy the relevant criteria (in column B and any Additional Criteria specified by the parties) and which are subject to the Reporting Obligation as determined by the Reporting Party.

In column C, the parties will select which form of reporting shall apply to each transaction type. For example, in respect of 'OTC Derivative other than a Cleared OTC Derivative' in row 1, the parties may select that Delegated Reporting applies, either with respect to the Client or Fund Manager (as applicable), or that Mandatory Reporting applies. We expect that only the option that has been selected for the particular MRRA will be included, and the redundant checkboxes simply removed. For example, where the MRRA is entered into between a Reporting Party and a Fund Manager, only 'Delegated Reporting for Fund Manager' will be relevant.

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Similarly, where it is a party's preference to include qualifying criteria or additional detail, such as limiting the transaction type by date concluded, or excluding certain trade types (e.g. by class) or sub-categories of trades that are reported through other services or otherwise providing that certain transaction types or trades will only be reported upon the completion of certain conditions, such as onboarding with a third party service, this can be included in the table and/or set out in the definition of 'Additional Criteria'. Otherwise, any additional details can be included in Paragraph 15 (*Other Provisions*) of the Derivatives Annex or in a Schedule relating to 'Operational and Procedural Provisions'.

The scope of the definition of an OTC Derivative under EMIR is described above in the '*Regulatory Background*' section of this Explanatory Memorandum. The table includes a final row relating to transactions that are exchange-traded derivatives categorised as OTC Derivatives. This row is intended to capture exchange-traded derivatives executed on non-equivalent non-EU trading venues, and the row provides that Mandatory Reporting can be selected as applicable (where the Client is an NFC-). This is not an option provided for Exchange-Traded Derivatives, since Mandatory Reporting is only applicable to OTC Derivatives. Alternatively, the NFC- Client may elect to opt-out of Mandatory Reporting for exchange-traded derivatives that are OTC Derivatives under Paragraph 4 (*Mandatory Reporting Opt-Out*) of the Derivatives Annex. The parties may want to consider whether any amendments should be made to this row in the event that further regulatory guidance is provided on this matter.

Paragraph 3(D) includes wording which is intended to clarify the extent to which (i) the initial client leg of a transaction given up for clearing and/or (ii) the resulting Cleared OTC Derivative are Relevant Transactions for the purposes of the MRRA where the Reporting Party or Reporting Party Affiliate is the executing broker but not clearing broker (or vice versa). The wording reflects the position in Commission Delegated Regulation (EU) No 148/2013[23], which provides that where a contract is traded on a trading venue and cleared the same day, only the contracts resulting from clearing shall be reported.

Paragraph 4 (*Mandatory Reporting Opt-Out*) of the Derivatives Annex

Article 9(1a) of EMIR provides that where an NFC- has already invested in a reporting system prior to the Mandatory Reporting obligation becoming applicable, it may opt out of mandatory reporting and continue to report on its own behalf.

Paragraph 4 is intended to provide the parties with this opportunity to opt-out of Mandatory Reporting in respect of a particular sub-set of Relevant Transactions or specific Excluded Data. If an NFC- wants to opt-out of Mandatory Reporting altogether and make its own reports, it is not envisaged that the MRRA would be used for this purpose.

As discussed above in the '*Regulatory Background*' section of this Explanatory Memorandum, the 'Mandatory Reporting Opt-Out' may be useful in relation to the practical difficulties associated with the categorisation of some exchange-traded derivatives as OTC Derivatives (exchange-traded derivatives executed on non-equivalent non-EU trading venues). The NFC- can elect to apply the 'Mandatory Reporting Opt-Out' in respect of exchange-traded derivatives categorised as OTC Derivatives. The Delegated Reporting Provisions could then apply both to Exchange-Traded Derivatives and exchange-traded derivatives categorised as OTC Derivatives. The Mandatory Reporting Provisions would apply only to any other OTC Derivatives.

[23] Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 and published 23 February 2013 in the Official Journal of the European Union, as amended or replaced from time to time.

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The MRRA does not address the possible scenario of a UCITS or an AIF being an NFC- for EMIR purposes.[24] Unless further guidance is provided by regulators in respect of any apparent uncertainty in EMIR as to whether the Fund Manager and/or FC counterparty is responsible for reporting for a UCITS or an AIF that is an NFC-, the parties may wish to consider the NFC- opting-out of any Mandatory Reporting by the FC.

Paragraph 5 (*Disclosure of Client Status*) of the Derivatives Annex

Paragraph 5 provides the Client with an opportunity to provide the Reporting Party with certain regulatory status classification information. This is important for the purposes of determining whether Mandatory Reporting is applicable, since where the Client is an NFC- and its counterparty is an FC, the mandatory reporting requirement under EMIR will be applicable.

This paragraph is in square brackets and the Client can delete it as appropriate if it exchanges status information by some alternative means. The Client may, however, prefer to specify the means by which it provides the relevant status information to the Reporting Party, and it may do so by selecting the first or third checkbox, if, respectively, the ISDA Master Regulatory Disclosure Letter (or any electronic platform used to deliver such document) is the alternative method of exchange or otherwise a different method of exchange is used.

Paragraph 5 is not intended to set out an exhaustive list of status representations which the parties may want to exchange but is intended to provide the Client with a method by which it can specify whether or not it is an NFC-.

Paragraph 6 (*Transition between Reporting Models*) of the Derivatives Annex

Paragraph 6 sets out the election relating to Section 1 (*Transition between Reporting Models*) of the General Provisions. The parties can specify if one or both of 'Automatic Transition to Delegated Reporting' and 'Automatic Transition to Mandatory Reporting' will apply.

See pages 15-16 above in relation to Section 1 (*Transition between Reporting Models*) of the General Provisions for further guidance.

Language is also included to provide for Brexit. Where Mandatory Reporting applies prior to Brexit but following Brexit the Client and the Reporting Party are no longer both in the EU (or both in the UK), the Mandatory Reporting Provisions will no longer apply post-Brexit. Optional wording currently in square brackets can be included to also provide that, in such circumstances, a Delegated Reporting Transition Date will occur, and the Reporting Party will undertake Delegated Reporting on the terms set out in the Delegated Reporting Provisions.

Paragraph 7 (*Relevant Data*) of the Derivatives Annex

For the purposes of both the Delegated Reporting Provisions, which require the Reporting Party to submit Relevant Data to a Relevant Trade Repository by the Reporting Deadline, and the Mandatory Reporting Provisions, pursuant to which the Client will provide the Reporting Party with its Counterparty Data, a provision is included within the Derivatives Annex at Paragraph 7 (*Relevant Data*) pursuant to which the parties will specify whether 'Relevant Data' will comprise of one of Counterparty Data or Common Data, or both.

The parties are also able to exclude any data points from the scope of 'Relevant Data'. The parties are also provided with an election whereby 'Counterparty Data' can be defined by reference either

[24] Because the UCITS or AIF is established exclusively for the purposes of one or more employee share purchase plans.

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to the EMIR Reporting Annexes or to a Schedule relating to 'Operational and Procedural Provisions'. Alternatively, the parties can set out here the data which will comprise 'Counterparty Data'.

Paragraph 8 (*Reporting Party Affiliate*) of the Derivatives Annex

Paragraph 8 provides an election whereby the Reporting Party will specify each affiliate that will be a Reporting Party Affiliate for the purposes of the MRRA. There is an option to refer to the other (unnamed) affiliates as well, to avoid the need to amend the Annex to include further affiliates in the future. Alternatively, if a Reporting Party does not want to list the Reporting Party Affiliates it could amend Paragraph 8 so as just to refer to such affiliates that enter into Relevant Transactions with the Client or Fund from time to time.

Paragraph 9 (*Relevant Trade Repository*) of the Derivatives Annex

The parties can specify the details of any Relevant Trade Repository in Paragraph 9 for purposes of submitting data pursuant to the Delegated Reporting Provisions and/or the Mandatory Reporting Provisions. The parties may want to list multiple Trade Repositories or specify certain Trade Repositories for particular trade types only.

Optional wording is included in square brackets in sub-paragraph (B). If this wording is included, the Reporting Party will be required to notify the Client where it uses its discretion to select an alternative Trade Repository pursuant to sub-paragraphs (A)(ii) and (iii).

The language in Paragraph 9 is intended to be sufficient for use following Brexit, with appropriate reference to the UK EMIR Reporting Regime and to any Trade Repository in the same group which is established in the UK or the EU.

Paragraph 10 (*Amendment and Termination*) of the Derivatives Annex

In Paragraph 10, the parties can specify (for the purposes of Section 9 (*Amendment and Termination*) of the Delegated Reporting Provisions) the time periods relevant to a notice of amendment and a notice of rejection.

Paragraph 10 also allows the parties to specify the relevant notice period for a notice of termination of the MRRA.

Paragraph 11 (*Contact Information*) of the Derivatives Annex

Parties can specify their relevant contact details in Paragraph 11. Where an entity is not entering into the MRRA as Fund Manager, the relevant wording in (C) should be deleted. Where the MRRA is entered into by an Agent, the Agent's details can be inserted as the point of contact for the Client.

Paragraph 12 (*Confidentiality Waiver*) of the Derivatives Annex

In Paragraph 12, the parties can specify whether Section 2.1.1 or 2.1.2 of the General Provisions is applicable, or whether an alternative confidentiality waiver should be incorporated. Where the parties choose to use an alternative confidentiality waiver, the parties must insert the text of the desired confidentiality waiver either directly in Paragraph 12 or by cross-reference to an attachment or additional Schedule.

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Paragraph 13 (*Process Agent*) of the Derivatives Annex

In Paragraph 13, the parties can specify for the purposes of Section 8.3 of the General Provisions the details of the Process Agent for each of the Reporting Party, Client and/or Fund Manager. Where an entity is not entering into the MRRA as Fund Manager, the relevant wording in (C) should be deleted. Where the MRRA is entered into by an Agent, which has an office in England & Wales, it may be appropriate for the Agent to act as the Client's Process Agent.

Paragraph 14 (*Static Data*) of the Derivatives Annex

The parties may specify that Counterparty Data will include Static Data for the purposes of the Delegated Reporting Provisions and the Mandatory Reporting Provisions. Where Counterparty Data includes Static Data, the fields making up Static Data may be set out separately in a Schedule relating to 'Static Data'. Pursuant to Paragraph 14, where Counterparty Data includes Static Data, the parties will also set out the effective date of any changes to Static Data for the purposes of the Delegated Reporting Provisions only. The parties may agree that a grace period will apply prior to the relevant change to Static Data taking effect. Alternatively, the parties may elect that the Reporting Party will be obliged to use the Static Data immediately following any notification of a change to it. The parties also have the ability to specify alternative wording setting out how and when Static Data, and changes thereto, will be effective.

Paragraph 15 (*Other Provisions*) of the Derivatives Annex

The parties may prefer to include further provisions in the Derivatives Annex. They can do so in Paragraph 15. Alternatively, the parties can specify any further details in a Schedule relating to 'Operational and Procedural Provisions'.

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Securities Financing Transactions Annex

The Securities Financing Transactions Annex is an optional annex that the parties should include if they are in-scope of SFTR reporting obligations. The Securities Financing Transactions Annex sets out a number of SFT-specific provisions, which include both checkbox elections and definitions. The parties should consider whether the template Securities Financing Transactions Annex is sufficiently detailed; where the parties consider that further provisions are required, they can add these in Paragraph 15 (*Other Provisions*) of the Securities Financing Transactions Annex. Where paragraphs in this Annex are not relevant, the parties can remove them.

Paragraph 1 (*Effective Date*) of the Securities Financing Transactions Annex

An 'effective date' concept has been included in the Securities Financing Transactions Annex to ensure maximum flexibility. The parties could execute the MRRA but provide that the effective date of the Securities Financing Transactions Annex is a later date; the form of reporting described as applicable in Paragraph 3 (*Relevant Transactions and Related Elections*) of the Securities Financing Transactions Annex would only be applicable from the specified effective date. This mechanism may be useful where an entity (likely the Reporting Party) is conducting outreach with a number of clients and attempting to agree a form of MRRA with each one prior to the relevant SFTR reporting phase-in date. Also, Paragraph 3 (*Relevant Transactions and Related Elections*) of the Securities Financing Transactions Annex can be used to specify the date on which reporting of Relevant Transactions for the Client or Fund will commence, having regard to the various phase-in dates for reporting under SFTR.

This paragraph also includes language which seeks to deal with SFTR following Brexit. It is envisaged that the MRRA will be sufficient for the purposes of any UK reporting regime post-Brexit which is equivalent to SFTR, provided that the UK SFTR Reporting Regime is substantially similar to the SFTR reporting regime.

Paragraph 2 (*Applicable Reporting Regime(s) for Client or Fund*) of the Securities Financing Transactions Annex

This optional paragraph is included in the MRRA in square brackets. Some entities may prefer not to specify the Applicable Reporting Regime(s) in the MRRA itself and may prefer to delete this paragraph.

As the relevant footnote indicates, where the MRRA relates to multiple Clients and/or Funds, the parties should consider using the relevant Schedule to specify the Applicable Reporting Regime(s) for each Client and/or Fund.

Paragraph 3 (*Relevant Transactions and Related Elections*) of the Securities Financing Transactions Annex

This paragraph sets out, in template tabular format, the scope of transactions covered by the MRRA.

The transactions covered by one or both of Delegated Reporting and Mandatory Reporting will be those Relevant Transactions as set out in column A (Transaction type) of the table, which satisfy the relevant criteria (in columns B, C and D and any Additional Criteria specified by the parties) and which are subject to the Reporting Obligation as determined by the Reporting Party.

Column B could be used to allow parties to agree to report both sides of SFTs from April 2020 despite the Client or Fund (as applicable) not being required under SFTR to report the details of SFTs until

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a later phase-in date. This could minimise the need for later 'backloading' reports on behalf of the Client or Fund.

Column C is included to address the 'backloading' obligation in Article 4(1) of SFTR or, with effect from the UK SFTR Reporting Date, the equivalent provision within the UK SFTR Reporting Regime. If 'backloading' is specified as 'applicable' in column C in relation to a transaction type and a specific reporting start date (as specified in column B), e.g. 11 April 2020, then the parties are agreeing that transactions concluded before the relevant reporting phase-in date and outstanding as of that date with either (i) a remaining maturity on that date exceeding 180 days or (ii) an open maturity and remaining outstanding 180 days after that date, will be reported by the Reporting Party within 190 days of that reporting phase-in date. Where Mandatory Reporting applies, it will not be possible for the Reporting Party to opt-out of making 'backloading' reports for the NFC- SME counterparty.

'Backloading' is shown as 'N/A' for Prime Brokerage Margin Lending Transactions because these will be a single margin loan per currency outstanding at any time and reporting of historic valuation data for that loan is not required.

In column E, the parties will select which form of reporting shall apply to each transaction type. For example, in respect of 'Repurchase Transaction' in row 1, the parties may select that Delegated Reporting applies, either with respect to the Client or Fund Manager (as applicable), or that Mandatory Reporting applies. We expect that only the option that has been selected for the particular MRRA will be included, and the redundant checkboxes simply removed. For example, where the MRRA is entered into between a Reporting Party and a Fund Manager, only 'Delegated Reporting for Fund Manager' will be relevant.

Similarly, where it is a party's preference to include qualifying criteria or additional detail, such as limiting the transaction type by date concluded, or excluding certain trade types (e.g. by class) or sub-categories of trades that are reported through other services or otherwise providing that certain transaction types or trades will only be reported upon the completion of certain conditions, such as onboarding with a third party service, this can be included in the table and/or set out in the definition of 'Additional Criteria'. Otherwise, any additional details can be included in Paragraph 15 (*Other Provisions*) of the Securities Financing Transactions Annex or in a Schedule relating to 'Operational and Procedural Provisions'.

Paragraph 4 (*Disclosure of Client Status*) of the Securities Financing Transactions Annex

Paragraph 4 provides the Client with an opportunity to provide the Reporting Party with certain regulatory status classification information. This is important for the purposes of determining whether Mandatory Reporting is applicable, since where the Client is an NFC- SME and its counterparty is an FC, the mandatory reporting requirement under SFTR will be applicable.

This paragraph is in square brackets and the Client can delete it as appropriate if it exchanges status information by some alternative means. The Client may, however, prefer to specify the means by which it provides the relevant status information to the Reporting Party, and it may do so by selecting the first or third checkbox, if, respectively, the ISDA Master Regulatory Disclosure Letter is the alternative method of exchange (were it to be amended to include an SFTR Annex at a point in the future) or otherwise a different method of exchange is used.

Paragraph 4 is not intended to set out an exhaustive list of status representations which the parties may want to exchange but is intended to provide the Client with a method by which it can specify whether or not it is an NFC- SME.

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Paragraph 5 (*Transition between Reporting Models*) of the Securities Financing Transactions Annex

Paragraph 5 sets out the election relating to Section 1 (*Transition between Reporting Models*) of the General Provisions. The parties can specify if one or both of 'Automatic Transition to Delegated Reporting' and 'Automatic Transition to Mandatory Reporting' will apply.

See pages 15-16 above in relation to Section 1 (*Transition between Reporting Models*) of the General Provisions for further guidance.

Optional language is also included to provide for Brexit based on the draft ESMA Guidelines for reporting under Articles 4 and 12 of SFTR, which indicate that reporting cannot be mandatorily allocated to a third country entity (absent an equivalence determination under Article 21), and based on the assumption that the draft ESMA Guidelines will be followed in the UK post-Brexit.[25] Where Mandatory Reporting applies prior to Brexit but following Brexit the Client and the Reporting Party are no longer both in the EU (or both in the UK), the Mandatory Reporting Provisions will no longer apply post-Brexit. Additional optional wording currently in square brackets can be included to also provide that, in such circumstances, a Delegated Reporting Transition Date will occur, and the Reporting Party will undertake Delegated Reporting on the terms set out in the Delegated Reporting Provisions.

Paragraph 6 (*Relevant Data*) of the Securities Financing Transactions Annex

For the purposes of both the Delegated Reporting Provisions, which require the Reporting Party to submit Relevant Data to a Relevant Trade Repository by the Reporting Deadline, and the Mandatory Reporting Provisions, pursuant to which the Client will provide the Reporting Party with its Counterparty Data, a provision is included within the Securities Financing Transactions Annex at Paragraph 6 (*Relevant Data*) pursuant to which the parties will specify whether 'Relevant Data' will comprise of one of Counterparty Data or Common Data, or both.

The parties are also able to exclude any data points from the scope of 'Relevant Data'. The parties can use 'Excluded Data' to specifically exclude each data point in Table 4 of the SFTR Reporting Annexes (i.e. all re-use data). The parties may utilise one of the options in Paragraph 7 (*Collateral*) of the Securities Financing Transactions Annex and accomplish the same result, or otherwise set out limits or conditions in respect of the Relevant Data in a Schedule relating to 'Operational and Procedural Provisions'. In relation to Mandatory Reporting, the Reporting Party should consult its own independent professional advisers on the extent to which any exclusion of data is permissible. In relation to securities collateral re-use, if the Client can confirm (under Paragraph 7 (*Collateral*) of the Securities Financing Transactions Annex) that it does not re-use securities collateral, this will avoid the need to report such re-use or to carve-out the relevant data fields in Table 4 from being Relevant Data.

The parties are also provided with an election whereby 'Counterparty Data' can be defined by reference either to the SFTR Reporting Annexes or to a Schedule relating to 'Operational and Procedural Provisions'. Alternatively, the parties can set out here the data which will comprise 'Counterparty Data'. Similarly, a provision is included in respect of 'Common Data', whereby the parties can specify which data within Tables 2, 3 and/or 4 of the SFTR Reporting Annexes will constitute Common Data.

[25] In the case of SFTR, and where branches are involved, this interpretation is based on the draft ESMA Guidelines for reporting under Articles 4 and 12 of SFTR (paragraph 5.3.2) as mentioned in footnote 15.

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Paragraph 7 (*Collateral*) of the Securities Financing Transactions Annex

Market participants have identified difficulties with reporting of securities collateral re-use, not least that securities collateral re-use may need to be estimated across the whole business of the Client or Fund. The scope of reporting of reinvestment of cash collateral, however, is narrower and should be easier to address.

The purpose of Paragraph 7 is to provide the parties with alternative elections in circumstances where they choose not to use Paragraph 6 (*Relevant Data*) of the Securities Financing Transactions Annex to classify Table 4 collateral re-use data in its entirety as 'Excluded Data' or to carve it out of scope of 'Common Data'. These options aim to provide parties with maximum flexibility for dealing with securities collateral re-use. In particular, if the Client can confirm that it does not re-use securities collateral, this will avoid the need to report such re-use or to carve-out the relevant data fields in Table 4 from being Relevant Data. One of the options provided is to allow the Reporting Party to delegate the reporting of securities collateral re-use to the Client. Pursuant to this option, and only in respect of the specific data associated with securities collateral re-use, the Reporting Party will be considered the Delegating Party and the Client will be the Reporting Party.

The Reporting Party should consult its own independent professional advisers on the extent to which it can carve out reporting of securities collateral re-use.

Paragraph 8 (*Reporting Party Affiliate*) of the Securities Financing Transactions Annex

Paragraph 8 provides an election whereby the Reporting Party will specify each affiliate that will be a Reporting Party Affiliate for the purposes of the MRRA. There is an option to refer to the other (unnamed) affiliates as well, to avoid the need to amend the Annex to include further affiliates in the future. Alternatively, if a Reporting Party does not want to list the Reporting Party Affiliates it could amend Paragraph 8 so as just to refer to such affiliates that enter into Relevant Transactions with the Client or Fund from time to time.

Paragraph 9 (*Relevant Trade Repository*) of the Securities Financing Transactions Annex

The parties can specify the details of any Relevant Trade Repository in Paragraph 9 for purposes of submitting data pursuant to the Delegated Reporting Provisions and/or the Mandatory Reporting Provisions. The parties may want to list multiple Trade Repositories or specify certain Trade Repositories for particular trade types only.

Optional wording is included in square brackets in sub-paragraph (B). If this wording is included, the Reporting Party will be required to notify the Client where it uses its discretion to select an alternative Trade Repository pursuant to sub-paragraphs (A)(ii) and (iii).

The language in Paragraph 9 is intended to be sufficient for use following Brexit, with appropriate reference to the UK SFTR Reporting Regime and to any Trade Repository in the same group which is established in the UK or the EU.

Paragraph 10 (*Amendment and Termination*) of the Securities Financing Transactions Annex

In Paragraph 10, the parties can specify (for the purposes of Section 9 (*Amendment and Termination*) of the Delegated Reporting Provisions) the time periods relevant to a notice of amendment and a notice of rejection.

Paragraph 10 also allows the parties to specify the relevant notice period for a notice of termination of the MRRA.

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Paragraph 11 (*Contact Information*) of the Securities Financing Transactions Annex

Parties can specify their relevant contact details in Paragraph 11. Where an entity is not entering into the MRRA as Fund Manager, the relevant wording in (C) should be deleted. Where the MRRA is entered into by an Agent, the Agent's details can be inserted as the point of contact for the Client.

Paragraph 12 (*Confidentiality Waiver*) of the Securities Financing Transactions Annex

In Paragraph 12, the parties can specify whether Section 2.1.1 or 2.1.2 of the General Provisions is applicable, or whether an alternative confidentiality waiver should be incorporated. Where the parties choose to use an alternative confidentiality waiver, the parties must insert the text of the desired confidentiality waiver either directly in Paragraph 12 or by cross-reference to an attachment or additional Schedule.

Paragraph 13 (*Process Agent*) of the Securities Financing Transactions Annex

In Paragraph 13, the parties can specify for the purposes of Section 8.3 of the General Provisions the details of the Process Agent for each of the Reporting Party, Client and/or Fund Manager. Where an entity is not entering into the MRRA as Fund Manager, the relevant wording in (C) should be deleted. Where the MRRA is entered into by an Agent, which has an office in England & Wales, it may be appropriate for the Agent to act as the Client's Process Agent.

Paragraph 14 (*Static Data*) of the Securities Financing Transactions Annex

The parties may specify that Counterparty Data will include Static Data for the purposes of the Delegated Reporting Provisions and the Mandatory Reporting Provisions. Where Counterparty Data includes Static Data, the fields making up Static Data may be set out separately in a Schedule relating to 'Static Data'. Pursuant to Paragraph 14, where Counterparty Data includes Static Data, the parties will also set out the effective date of any changes to Static Data for the purposes of the Delegated Reporting Provisions only. The parties may agree that a grace period will apply prior to the relevant change to Static Data taking effect. Alternatively, the parties may elect that the Reporting Party will be obliged to use the Static Data immediately following any notification of a change to it. The parties also have the ability to specify alternative wording setting out how and when Static Data, and changes thereto, will be effective.

Paragraph 15 (*Other Provisions*) of the Securities Financing Transactions Annex

The parties may prefer to include further provisions in the Securities Financing Transactions Annex. They can do so in Paragraph 15. Alternatively, the parties can specify any further details in a Schedule relating to 'Operational and Procedural Provisions'.

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Schedules

Schedule relating to '*Static Data*'

To the extent that Counterparty Data is provided by the Delegating Party or Client to the Reporting Party in the form of Static Data, the details of that Static Data may be set out in a Schedule relating to 'Static Data'.

Schedule relating to '*Operational and Procedural Provisions*'

If specified as applicable in either the Delegated Reporting Provisions or the Mandatory Reporting Provisions, the parties should include a Schedule relating to 'Operational and Procedural Provisions'.

This is intended to allow parties to specify any details specific to a counterparty pairing or to include details of any processes relating to Delegated Reporting and/or Mandatory Reporting.

By way of example, the Delegating Party may wish to have regard to the EBA Guidelines[26], which entered into force on 30 September 2018. The guidelines set out rules that financial institutions should follow when outsourcing business activities. Any additional reporting processes that the parties seek to document on the basis of the EBA Guidelines may be included in this Schedule.

Schedule relating to '*List of Clients*'

This Schedule can be included in the MRRA if an Agent is signing on behalf of multiple Clients.

If a Fund is included as a Client in this Schedule because certain transactions of the Fund (Exchange-Traded Derivatives) are not the direct responsibility of the Fund Manager to report, this Schedule could also indicate the Relevant Transactions for which the Fund is treated as a Client.

Schedule relating to '*List of Funds*'

This Schedule can be included in the MRRA if an Agent is signing on behalf of multiple Clients.

If, for certain types of transactions (Exchange-Traded Derivatives) the Fund Manager is not directly responsible for reporting and the Fund is therefore also listed as a Client, this Schedule could also indicate the Relevant Transactions that are not covered under this Schedule.

[26] https://eba.europa.eu/sites/default/documents/files/documents/10180/2551996/38c80601-f5d7-4855-8ba3-702423665479/EBA%20revised%20Guidelines%20on%20outsourcing%20arrangements.pdf?retry=1.

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