

EFAMA's reply to ESMA's Discussion paper on draft RTS and ITS under the Securities Financing Transaction Regulation

Introduction

EFAMA¹ is grateful for the opportunity to contribute to the drafting of the Regulation through a consultation and we appreciate the effort of the regulator to adopt an approach to reporting consistent with EMIR and to develop, where more efficient, a different reporting logic.

There are however a list of issues that we would like to address before replying to the questionnaire:

Timing issues:

- The time allowed to reply to this consultation is unfortunately extremely limited. Stakeholders have been offered only 6 weeks to comment on the discussion paper issued by ESMA. This document represents a very comprehensive work with 145 different questions that cannot be properly discussed internally in such a short timeframe.

For that reason, some of our replies are lacking the level of details that we would have wished to provide.

- The time that would be allowed to implement this very technical regulation will be crucial to avoid the issues faced with EMIR.

The implementation of the new technical standards should be made only mandatory for the reporting financial counterparties (e.g. UCITS/AIFs) at least eighteen months following the publication of the Regulation in the Official Journal.

This presumes that

- o The trade repositories (TR) are able to provide the new data field requirements to the reporting counterparties promptly after the publication of the Regulation in the Official Journal.
- o The obligations laid down by the TRs on the reporting counterparties are duly communicated. Otherwise, management companies are not able to implement the *new obligations meaning that incorrect SFT reports will be sent to the TRs.*

Information issues

- Excessive amount of information to communicate:

¹ **EFAMA** is the representative association for the European investment management industry. EFAMA represents through its 26 member associations and 61 corporate members EUR 21 trillion in assets under management of which EUR 12.6 trillion managed by 56,000 investment funds at end 2015. Just over 30,000 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining 25,900 funds composed of AIFs (Alternative Investment Funds). For more information about EFAMA, please visit www.efama.org

Highly regulated investment funds already have to adhere to the reporting obligations of securities financing transactions as required by the UCITS/AIFM Directive and the National Central Bank and national regulators.

We believe that there are already information available that should be used in the collection of data for securities financing transaction before requiring further reporting.

Furthermore, we believe that the information required should be meaningful for their purpose and not "harvested as broadly as possible";

- Excessive level of details required:

Any reporting is a matter of details and implies heavy costs; in that respect a profound and confident discussion with the industry is the best way for regulators to produce a workable framework at an acceptable cost.

We hope that this discussion paper will constitute the base ground for that discussion and that several fields that are required will be removed, taking into account the elements raised in our replies to the questions below.

- Need to ensure extensive reporting integration:

We wish to insist here again on the necessity to capitalize on preexisting data collection processes and we welcome the reference to EMIR and the use of TRs (that have been introduced under EMIR) in order to collect data on SFTs.

We want to encourage ESMA to maintain this approach. However we are slightly disappointed to see that the MIFID/R reporting obligations are considered independently of the preexisting framework of other regulations and we ask ESMA to do its utmost to avoid this type of situation. The fact that they have different objectives does not seem to fully justify a limited transversal approach

- Single sided reporting:

Considering the difficulties in implementing EMIR reporting and the persistence of problems in reconciling transactions by TRs, we urge ESMA to envisage every solution that would allow single sided reporting, at least until the architecture for immediate reporting reconciliation is not in place.

Use of identifiers

- We strongly support the work started by IOSCO to establish a global UTI for the derivative reporting obligation. As a starting point of discussion, a similar global UTI concept could be developed for the SFT reporting;
- A clear UTI framework for SFTs (analogue to the implementation of the UPI approach for EMIR) is necessary in order to avoid any inconsistencies by the reporting counterparties.
- The reporting counterparties need a clear UTI framework including also the responsibilities of creating and transmitting the UTIs to the counterparties. From our perspective, the "Sell-Side" entities are the best placed to do so and should create and transmit a UTI to the management companies;
- The UTI should be transmitted to the other counterparty on a standardized and automated basis enabling the counterparty to report the required UTI data field to the TR in time with no manual intervention;
- Furthermore, a consistent UTI should also take into consideration the possibility to link the legs of a cleared transaction by using a common identifier.

Rules specific to asset managers

- Absence of leverage for regulated funds:

As a general rule and with the exception of some AIFs, asset managers rarely use SFTs to leverage their portfolios:

- o The re-use is totally forbidden for UCITS according to ESMA guidelines;
- o Fund managers use Efficient Portfolio Management techniques, mostly in the form of reverse repo (to secure their cash holdings) and securities lending (in order to increase the return for their client investors);

Consequently, asset management is not an issue in terms of financial stability and should not, with the exception of hedge funds, be the focus of SFT regulation; a proportionate "light regime" of reporting should be provided for UCITS and AIFs that do not use significant leverage;

- In this context and with reference to the valuation of collateral, we do not consider appropriate to apply the IFRS13 methodology as they are not universally adopted across Europe and member states can adopt other methodology of asset valuation.

Introducing the valuation of collaterals with the IFRS 13 methodology would therefore generate excessive operational burden not justified by the objective of the current Regulation.

11. Do you agree with the proposed technical format, ISO 20022, as the format for reporting? If not, what other reporting format you would propose and what would be the benefits of the alternative approach?

We welcome the choice made to use of ISO 20022, allowing for some reduction on implementing costs because it is similar to the standards proposed for MiFID II / MiFIR reporting.

We encourage ESMA to deploy it consistently for similar requirements in the future. (See also our reply to Q22).

12. How would the proposed format comply with the governance requirements in paragraph 75? Please elaborate.

We welcome the work done by ESMA on ISO 20022 message, also in relation to transaction reporting under MiFIR Article 26.

We would therefore encourage ESMA to engage:

- with the ISO 20022 Securities Standards Evaluation Group in order to participate in future discussions on upcoming change requests;
- with the ISO 20022 Registration Management Group, which has responsibility in the first instance for governance of the ISO 20022 standard itself; and
- in discussions with other regulators in order to ensure that the messages are also suitable for reporting in other jurisdictions.

14. Do you foresee issues in identifying the counterparties of an SFT trade following the above-mentioned definitions?

We do not foresee any major difficulty in the identification of counterparties.

Nevertheless, we ask ESMA to remain cautious at avoiding to:

- Impact negatively triparty service providers or other intermediaries; and
- Create misunderstanding or confusion in several definitions:
 - o the definition of counterparties.
As opposed to the reference made in this discussion paper, "Counterparties" are the parties of a trade. Agents of those counterparties cannot qualify as "counterparty".
 - o The definition of ETFs and MMFs
The definitions mentioned in the regulation are helpful and clear however we do not understand why ETFs and MMFs are mentioned separately (para. 95) as in our understanding they are no different from other UCITSs or AIFs.

We do not agree with the proposed definition in para 96 and 97 in respect to highly regulated investment funds (UCITS/AIFs). The proposal covers only market participants acting on their own account as counterparty of an SFT. In some EU Member States, investment funds are established in accordance with contract law meaning that UCITS/AIF management companies enter as legal counterparty into SFTs (e.g. security loan transactions). In such cases, the management company is acting for the joint account of the investors of the relevant investment fund. The asset management company does not act as broker and it does not act as intermediary as further explained with respect to CCPs in para 98.

Finally, we encourage ESMA to clarify the proposed definition of a party to an SFT taking into considerations the EU fund regulation requirements (Article 1 para 3 of 2014/91/EU Directive) as well in respect to highly regulated investment funds constituted in accordance with contract law.

15. Are there cases for which these definitions leave room for interpretation? Please elaborate.

Apart from the two elements raised in our reply to Q14, we agree with most of the definitions.

Nevertheless, we would like to add another element of concern regarding the definition of "Broker".

We believe that the use of the term "broker" for any intermediary that acts on behalf of a counterparty (paragraph 97) is not appropriate and will create confusion as the general understanding is that a "broker" performs a specific role in a transaction.

Considering all actors as "brokers" would be inconsistent with other types of agent/intermediary that might be identified in a report.

We would therefore strongly suggest ESMA to replace it with e.g. the terms of "executing agent".

16. *Is it possible to report comprehensive information at transaction level for all types of SFTs and irrespective of whether they are cleared or not?*

We believe that our members can report comprehensive set of information.

However the notion of “comprehensive details” is extremely unprecise and need to be urgently specified.

We see also some limitations:

- We should be able to report Financial and CSD details on T; but
- Standardized Master Agreements on SFT include a mechanism by which the collateralization can be done at the total exposure but not an individual transaction's level.

For that reason, we foresee difficulties in reporting information on SFTs at the transaction level, depending on the exact definition of transaction.

For example, several fund are lending one batch of securities out of an asset pool of funds that are authorised to lend. At the end of the day, the exact allocation among participating funds to the asset pool will be finalised on the basis of predetermined and precise rules that include regulatory and risk management ratios.

With an average of 5 to 6 daily adjustments each and when we use some tri party agents to manage collateral, there are reviews every 15 minutes, any reporting of these numerous and technical changes would be impossible.

We are not totally clear about the possibility to identify such an asset pool among different funds as the counterparty or the necessity to book funds individually ; in that later case we wonder whether we could nevertheless use only one UTI for this trade that is a many to one securities lending transaction.

17. *Is there any need to establish complementary position-level reporting for SFTs? If yes, should we consider it for particular types of SFTs, such as repo, or for all types?*

Where position reporting is used, we believe it should be sufficient for the purposes of monitoring systemic risk to simply update the position.

As a matter of fact, collateral is managed at position level between two counterparties and not individually transaction by transaction for securities lending. Global Master Securities Lending Agreements (“GMSLA”) are very clear on this point.

Conversely, GMRA foresees for Repos a collateral management on a contract per contract basis.

SFTR requirements should sufficiently adaptable to reflect these different architectures and not impose any position level report on Repos that would come as an addition to the required transaction level, nor demand collateral report on securities lending at a transaction level

Finally, as a reminder, regarding securities lending, UCITS are only allowed to act as lender. Same counts for AIFs with low leverage that are often "UCITS like" funds.

18. *Is there any need to differentiate between transaction-level data and position-level data on loans from financial stability perspective? Please elaborate.*

We do not believe that this is relevant for regulated funds as most of them are not allowed to borrow asset.

Additionally, we do not believe position data is required as the position data can be sourced from transaction data.

However, if it is determined that both transaction and position level reporting are required, then different reporting formats would be required.

19. *Would the data elements included in section 6.1 be sufficient to support reporting of transactions and positions?*

We believe that the data elements included in section 6.1 are far too detailed.

For example, regarding the listing of individual lines of collateral, we believe that this listing could be challenging as each individual trade might receive several different lines of individual collateral.

We also believe that certain information in the transaction data are not required as they relate to contract information rather than transaction, i.e. Master Agreement details, and therefore could be burdensome to provide.

Furthermore, the information required are not prioritised.

Authorities should assess which fields are mandatory and which are optional. A third level should be recognised for fields that are mandatory but do not constitute blocking criteria if not matched with the counterparty.

We should aim at reducing improper rejections of reports that result from the dual sided reporting requirement.

In more details, we wish to express a few comment on the different fields that are listed in the Annex 6.1 and to the number of the field concerned in the section of annex 6.1 dedicated to securities lending (section 6.1.3 page 135).

- P.138 (7) the convention for buyer and seller is not appropriate (see our comment below).
- P. 142 (1) Who is in charge of providing the UTI? In which timeframe?

- P142 (8) the difference between automated and automatic trading is unclear and does not refer to market reality.
- P143 (9): the place of settlement as far as funds are concerned is rarely available to the asset management company.
- P143 (11, 12, 13) these fields introduce a confusion between legal documentation that is under the supervision of the legal department and the trading activity that is conducted at a front office desk; front office is not to be burdened with any other complexity than “yes” or “no” on the eligibility of a counterparty; that relates to the existence of a master agreement in an adequate version; further specifications will not be available at its level and would be very difficult to import.
- P144 (18) UCITS must be able to stop a transaction at any time: is zero an acceptable figure?
- P145 (21) the introduction of a specific item for settlement through CREST appears redundant if other indications are required for settlement.
- P147 (33-34): there is not much clarity on the distinction between the two items; what is price if not market price?
- P148 (38): the information on a possible exclusive access is not referenced today and is not in the reach of the operational trading settlement teams.
- P 149 (9) technical point on pre euro currencies
- P149 (11) practitioners differentiate between clean and dirty price: which one is expected here?
- P 150 (12-13) collateral is posted globally and generally includes minimum collateral required, haircut and over collateralisation in excess of those. It is not easy to split and even very difficult if we take into account the diverse levels of haircuts for different types of collateral within the same portfolio. We suggest to populate field 12 with the total amount of collateral.
- P 150 (14 to17) the ISIN code sufficiently identifies the security; we oppose the reference to CRA's ratings in a regulatory reporting and refuse the cost incurred.

Some comments are specific to Repos:

- P111 (24) we do not lend commodities and would have to systematically introduce a new item.
- P115 (35-36) for repos and their floating rate leg, we think it is not necessary to report the rate adjustments since the computation methodology is made available
- P115 (38) it is useless to guess the evolution of a floating rate to maturity.

20. *Would the data elements differ between position-level data and transaction-level data? If so, which ones?*

We do believe that there are differences between the two on UTI, Clearing Timestamps, Execution timestamps, price fields.

As expressed previously, we do not believe Position data is required (as per our replies to Q17/Q18

ESMA could instead refer to existing operational flows of information and especially Agent Lending Disclosure (ALD) reports that are exchanged daily through platforms such as Equilend for securities lending.

These reports are operationally efficient and allow counterparties to daily control their collateral on a position basis.

21. *Would the proposed approach for collateral reporting in section 4.3.5 be sufficient to accurately report collateral data of SFT positions? Please elaborate.*

We believe that this question would be better addressed in section 4.3.5.

The actual collateral to be provided is often not known until the moment the trade is settled.

We therefore believe that reporting of collateral should not be required until the business day following settlement (S+1) but rather on the Value date or Value Date +1.

Additionally, we believe it should be the seller (collateral giver) to report collateral data only.

Finally, we would like ESMA to clarify the conclusion mean, e.g. on Value Date.

22. *From reporting perspective, do you foresee any significant benefits or drawbacks in keeping consistency with EMIR, i.e. applying Approach A? What are the expected costs and benefits from adopting a different approach on reporting of lifecycle events under SFTR with respect to EMIR? Please provide a justification in terms of cost, implementation effort and operational efficiency. Please provide concrete examples.*

We strongly support ESMA's approach to keep consistency as far as operationally possible with the existing EMIR reporting scenarios in order to reduce the operational implementation burden for the reporting counterparties.

We believe that Approach A would be

- simpler to implement;
- reduce the risk of errors; and
- improve data quality by limiting the risk of errors.

Additionally, the Approach A is already in place, which would facilitate application and reduce implementation costs.

We also believe that the same UTI should be used with each lifecycle event. For example if you are amending a trade, it is the same transaction that you amend. Therefore, the identifier of the transaction should remain the same.

Finally, the SFT trade repositories ("TRs") should be enabled to use the existing EMIR reporting channels/requirements as a starting point for discussion for the new SFT obligations including the data fields.

23. Do you agree with the proposed list of "Action Types"? If not, which action types should be included or excluded from the above list to better describe the SFT? Please elaborate.

As noted in our response to Q22, we believe the simpler it is to implement a process, the less prone it will be to error and the poor data quality.

We therefore recommend, that the action types are confined to:

- New
- Modify (defined to encompass all modifications to an existing report other than collateral updates)
- Cancellation (as a replacement term for "error", as proposed in Approach B)
- Early termination
- Collateral update (but note that in our response to Q91 we support option that collateral always be reported in a separate message).

Regarding collateral substitution, the question that is not clearly addressed.

From our perspective, it should be part of the collateral updates.

24. Do you foresee any benefits or drawbacks of implementing the proposed reporting logic of event types and technical actions (Approach B)? Please elaborate.

We refer to our replies to Q22 and Q23.

We believe Approach B would be overly complex and, as such, do not support it.

25. Do you agree with the proposed list of event types and technical actions? If not, which ones should be included or excluded?

Should ESMA choose nevertheless to follow Approach B, we believe the technical action "correction" and "re-pricing life cycle" event type should be removed (both being embraced within the definition of a modification for each type of SFT).

26. Do you foresee any need to introduce a unique reference identifier for the lifecycle events or for technical actions? Please elaborate.

We do not support the idea to introduce new identifiers.

EFAMA has been supportive of the LEI ROC work since its inception and we believe subsequent reports concerning an existing trade or position report should utilise the UTI of that report.

Introducing a need for multiple identifiers for the same report would add complexity and therefore increase the risk of errors and poor data quality.

27. From reporting perspective, do you foresee any drawbacks in keeping consistency with EMIR? If so, please indicate which ones?

We consider it appropriate to maintain consistency with EMIR

We believe that there is one element, which was already raising issues in EMIR, could cause similar issues under SFTR.

The field "Counterparty side" has been problematic in EMIR due to the specific terminology of "buyer" and "seller": this terminology applies to transactions involving an exchange, leaving room for interpretation for OTC Derivatives transactions.

Under SFTR, there are two issues in using this terminology:

- For repos, each counterparty is both a buyer and a seller at different points in the transaction; and
- For securities lending, there is no buyer or seller as there is no buying or selling of transactions.

We would suggest to use a different terminology which would not unduly difficult for existing trade repositories to implement:

- Collateral taker for the "repo buyer" or "securities lender"; and
- Collateral giver for the "repo seller" or "securities borrower" (see also our response to Q28 and Q29).

28. Are the proposed rules for determination of buyer and seller sufficient? If not, in which scenarios it might not be clear what is the direction of the trade? Which rules can be proposed to accommodate for such scenarios?

We believe that the rules to identify who is a buyer or a seller are not logical:

- Even if we agree with the analysis conducted as far as Repos are concerned, where we have an immediate seller who transfers securities and pledges to buy them back in the future. Thus the buyer is the counterparty which receives the securities and sends cash.
- In the case of securities lending, practitioners never use the words buyer or seller to designate either the lender or the borrower of the securities. Moreover, this would be entirely counterintuitive in terms of qualification as a "buyer" cannot be a "securities lender".

Given the current terminology, we agree with the definition for repo etc. (receiver of the securities/commodities in the opening/spot leg is the buyer) and for margin lending (receiver of the loan is the buyer).

However, we believe the proposal for securities/commodities lending is inconsistent with both of these and recommend that the borrower of the funding/securities/commodities should be defined as the "Collateral Taker" (see also our reply to Q27 and Q29).

29. Are the proposed rules consistent with the existing market conventions for determination of buyer and seller? If not, please provide alternative proposals.

We do not believe market conventions use the terms buyer or seller in relation to all type of SFTs and further to our responses to Q27 and Q28, we would propose that "Collateral Taker" and "Collateral Giver" be used according to the following definitions:

- In the case of repurchase transactions and sell-buy back / buy-sell back transactions, the counterparty that receives securities, commodities, or guaranteed rights relating to title to securities or commodities on the opening or spot leg of the trade and agreeing to sell them at a specified price on a future date (closing or forward leg of the trade), shall be identified as the "Collateral Taker" (alternatively, it could also be called "receiver"). The other counterparty shall be identified as the "Collateral Giver" (alternatively, it could called "deliverer").
- In the case of securities or commodities borrowing and securities or commodities lending, the counterparty that receives the securities or commodities, subject to a commitment that equivalent securities or commodities will be returned on a future date or on request, shall be identified as the "Collateral Taker" (alternatively, it could also be called "receiver"). The other counterparty shall be identified as the "Collateral Giver" (alternatively, it could called "deliverer").

30. Are you aware of any other bilateral repo trade scenario? With the exception of tri-party agents that are documented in section 4.2.5, are there any other actors missing which is not a broker or counterparty? Please elaborate.

In our response to Q15, we question the use of the term "broker".

We recognise Scenario 1 as typical for a repo transaction executed by a discretionary portfolio manager as agent for its client, and envisage that the investment manager might be reported as an intermediary in the transaction, but they should not be referred to as a "broker".

In Scenario 2, the description of "Counterparty 3 acting as a broker but on its own account" reinforces our concerns about the use of the term "broker". The potential for confusion is obvious when, a "broker" for reporting purposes is only providing reporting services and is not a counterparty to the trade at any stage of the transaction.

Similarly to the regime proposed under Art. 9 of EMIR, the UCITS or AIF should be identified as counterparty (with its LEI) rather than the asset management company.

In cases where the relevant asset management company of an investment fund has outsourced the portfolio management to a third party, ESMA should evaluate if the insourcing company should be identified as broker.

32. Do you agree with the description of the repo scenarios?

We agree with these scenarios that represent industry's practice.

However, we would like that ESMA clarifies the way the UTIs will be attributed, especially under Scenario 4.

33. Are you aware of any other repo scenarios involving CCPs?

From a general perspective, we are closely following any new developments that major CCPs work upon in order to improve asset protection or to facilitate full segregation of assets from clearing members such as "sponsored access to CCPs" "

However, so far, we do not see much central clearing activities on SFTs within the asset management industry.

38. Are there any differences in the parties involved according to the different agency lending models?

First and foremost, we would like to insist on the difference between securities lending and repos:

The repos are:

- "cash driven". This means that the transaction is initiated by the seller of securities. In this context, the seller of the securities (designated also as the collateral giver) enters into this transaction to obtain cash by selling some of its assets to some cash-rich market participants (the buyer of the securities/collateral taker). By the selling nature of the transaction, the securities become out of the reach of the seller for the length of the transactions and the seller must remunerate the cash that it borrowed;
- encompassing, as for any sale of assets, a legal transfer of ownership of the assets sold. The repos transactions are executed exclusively on a "delivery versus payment" mode. The sole difference with a standard selling of assets is that the contract also includes (i) an obligation to sell back the securities at a given point in time and at a given price, (ii) the reception of a remuneration agreed at the initiation of the transaction and (iii) the obligation to return any proceed received during the lifetime of the transaction by the collateral taker to the collateral giver;
- not creating risk for the collateral taker (the market practice is to collateralize repos between 100 and 105%) and by supporting repos activities (the income is already known from the starting date of the transaction).

One cannot replace the other. For that reason, ESMA's assumption in para. 156 including the reference to margin note 15 is wrong.

Principal-to-Principal security loan transactions are the most used structure and have nothing to do with ICMA's study.

Secondly, we do not recognise these models as the most common way of conducting transactions among the different scenarios presented in the discussion paper.

We typically identify funds that can lend securities and aggregate them in an asset pool.

We trade through a broker that will act as an agent and lend a security for a given quantity out of the pool of assets of the funds:

- A direct transaction will be confirmed between counterparty A and the pool;
- At the end of the day the final allocation will be made and individual confirmations sent to each fund;
- The details will be sent to the counterparty and settlement will take place through one single transfer out of the common depository of all the concerned funds.

39. *When would the both counterparties know the other's identity in an undisclosed lending agreement?*

We refer to our response to Q38. Under an "undisclosed lending agreement" the counterparties always know each other.

40. *What other solution would you foresee for the reporting of trades involving the agent lender? Please elaborate.*

Our main concern in this question is in relation to loan trades being reported by Close Of Business (COB) and the collateral due to be delivered on T+1.

In practice, however, the collateral is rarely settled until settlement date (T+2/3) and therefore we might not be able to meet the COB deadline.

Additionally, in Scenario 2, we do not see any benefit from mentioning any Agent. ESMA should focus on the legal counterparties to the securities loan transactions and an agent is not a counterparty.

Therefore, the agent should not have a reporting obligation itself.

45. *What potential issues do reporting counterparties face regarding the reporting of the market value of the securities on loan or borrowed?*

We note that the valuation field appears in the transaction data table, which otherwise does not include data that would be updated regularly.

We would suggest that this field be moved to the collateral data table, which is similar to the reporting duties under EMIR Article 9 (where the valuation and collateral fields are regrouped).

On the frequency for valuation, daily valuation is the common regime for most funds. Asset managers do not face difficulties in valuing securities on loan or borrowed

46. Do such securities lending transactions exist in practice?

Prior to Lehman's default, lending without collateral might happen (mostly depending on the risk structure and risk awareness of the market participants).

Nevertheless, we wish to insist on the fact that the vast majority of asset managers that entered into securities loan transactions on behalf of their clients through UCITS and AIF have been fully collateralized for a long time, often with an additional haircut.

We are not aware of any situation where securities lending activity would nowadays remain without collateral.

47. Do you agree with the proposal to explicitly identify non-collateralised securities or commodities lending transactions in the reporting fields? Please elaborate.

We agree with the proposal of allowing for the explicit identification of non-collateralized securities or commodities lending when it occurs.

As per our reply to question Q46, we are not aware of any transaction that would remain uncollateralized for regulated funds.

We believe that, if such reporting was imposed, this might help supervisory authorities and regulators to understand that UCITS, AIF and their managers don't carry the risk that they are supposed to carry by SFTR.

48. Would it be possible that an initially unsecured securities or commodities lending or borrowing transaction becomes collateralised at a later stage? Please provide concrete examples.

There is no reason to rule out this possibility although we have no evidence that it happens in practice

Despite becoming a real exception, uncollateralised transactions are not condemned to stay without collateral, which would anyway be to the current willingness to systematically collateralise each transaction.

To the opposite, the practice does exist to pre-collateralise a future transaction.

53. What are the main types of commodities used in SFTs?

According to the definition of commodity in Art. 3 No. 17 of SFTR which refers to Art. 2 no. 1 of Regulation (EC) No. 1287/2006, the assets in reference are not eligible assets for UCITS and AIFs.

For that reason, there are no types of commodities at all that could be mentioned by an asset management company as being used in SFTs.

72. Do you foresee any issues with reporting information on SFT involving tri-party by the T+1 reporting deadline? If so, which ones – availability of collateral data, timeliness of the information, etc.? Please elaborate.

As previously mentioned, collateral information might not be available until Value date/value date +1.

Many of the market trades involving tri-party agents are based on acceptable collateral schedules. In that context, a counterparty could receive several lines of collateral from a potential list of thousands of different securities. We believe that counterparties will therefore often have difficulties to report collateral data within a T+1 timeframe, in particular in a triparty collateral framework, given the fact that the triparty agent have discretion the use of collateral from different ranges of permitted instruments and that the precise instruments may not be known until the settlement date.

This situation is also especially noticeable in the case of settlement information where not all relevant details are available on time due to the later settlement of collateral.

An extra day would therefore be necessary in most instances, especially with an agent based in a different time zone.

73. Would you agree with the proposed split between the counterparty and transaction data?

We agree with the concept of distinction for counterparty and transaction. Splitting data in two buckets is a fair proposition

However, in our view and as expressed before, fields to be populated should be classified. They are not all of the same importance. Small discrepancies in transaction data provided by both sides should not block validation of the report. Data on counterparties which are not of prime importance to allow identification should as well not be mandatory nor create a rejection of the report.

Additionally, as principle and based on EMIR experience, we oppose the dual sided reporting which has proved burdensome and has not yet stabilised under EMIR.

74. Is the reporting of the country code sufficient to identify branches? If no, what additional elements would SFT reporting need to include?

We do not believe that the reporting at branch's level is necessary or even useful.

We note that the proposal follows the approach taken in MiFID, but the objective there is to identify where investment and execution decisions are made for the purposes of identifying and investigating potential cases of market abuse.

We believe that, in contrast and as it is the case with EMIR, the objective of reporting under SFTR is to facilitate the monitoring of systemic risk in the financial system. Therefore, the approach to report at

branch level is not relevant as such risk resides in the balance sheets of the entities concerned and not at the level of the branch.

79. Are there any other cases which are not identified above, where the beneficiaries and the counterparties will be different? Please elaborate.

We do not agree with the particular phrasing in paragraph 200 suggests that sub-funds are not identifiable by LEI ("...sub-funds, which are not identifiable by LEI, can...").

Indeed, we insisted on the fact that it is the sub-funds who are contracting. Any other approach would create *de facto* an illegal situation by which solidarity would be created between sub-funds.

To complement this reading, the response to General Question 1(c) in the EMIR Q&A, from which this is inferred, reads as follows:

"If the derivative contract is concluded at the level of the sub-fund, the counterparty should be the sub-fund and not the umbrella fund. In that case, the sub-fund needs to have an LEI for reporting purposes and be identified as the counterparty."

Although it continues to consider a situation where the umbrella fund might be identified as the counterparty, we believe this anticipates a potential alternative scenario where the contract is concluded at the level of the umbrella and which never or extremely rarely occurs.

We would respectfully refer ESMA to the ISO 17442 (LEI) standard, which in fact includes sub-funds explicitly within the definition of an investment fund for which an LEI can be assigned.

To the opposite, it is not the case for each share class. Transactions are not legally conducted at the level of the share class.

In case of a mandate in a managed account, the LEI will identify the firm but not the portfolio, which seems appropriate legally, knowing that the accounting should be very specific on the portfolio concerned

Consequently we do not see difficulties in identifying the beneficiary of a SFT in the case of a fund.

We would also like to confirm that since UCITSs and AIFMs are financial counterparties and by definition beneficiaries, it is not necessary to fill in the fields related to the beneficiary, as they would be redundant.

80. Do you agree with the proposal to link the legs of a cleared transaction by using a common identifier?

We do not believe our members engage in cleared SFTs currently.

However, we would suggest alignment with the approach under EMIR whereby if the transaction is cleared on trade date, only the cleared position needs to be reported.

Additionally, as long as the non-cleared trade subject to a UTI is terminated, we do not see the requirement for this trade to be added to the T+1 reported Cleared trade.

This would be burdensome to maintain and report for an Asset Management company (see also our reply to Q26).

81. *Could you suggest robust alternative ways of linking SFT reports?*

Following on from our response to Q80, although we can understand ESMA's desire to connect the transactions in a clearing chain, we do not see any benefit in linking those to the original executed transaction(s), which will be terminated and not contribute to any systemic risk thereafter.

82. *Are the different cases of collateral allocation accurately described in paragraphs 221-226? If not, please indicate the relevant differences with market practices and please describe the availability of information for each and every case?*

Two types of transactions imply a time difference between trade and collateral.

In many instances, collateral will not be transferred at the date of transfer of the underlying securities. It will create distortions in data produced in the reporting and make an aggregate view misleading.

Additionally, in the scenario foreseen by ESMA, we see additional contracti:

- First, in case of pre-collateralisation when collateral is transferred ahead of the transaction with a view to secure its proper settlement, ESMA foresees that the reporting should take place at the time when the first cash leg is opened.
- Second, in case of Free of Payment transaction, the trade date is unknown because it depends on the transfer agreement between concerned custodians.

The trader can only estimate it at best and the collateral will be transferred on time for the estimated settlement date.

83. *Is the assumption correct that manly securities lending would require the reporting of cash collateral? If no, for which other types of SFTs is the cash collateral element required? Please elaborate.*

EFAMA members active in securities lending are collateralised to a large degree by securities and decreasingly in cash collateral.

The reason for this choice is the enhanced investor protection provided by the efficient segregation of securities compared to cash in case of default.

Moreover the trend towards securities collateral amplifies with the low or negative interest rate environment.

Obviously, it is to be kept in mind that, due to the nature of the contract, repos maintain a cash leg to the transaction.

84. Does the practice to collateralise a transaction in several amounts in different currencies exist? Please elaborate.

This is indeed the market practice: counterparties agree on eligible framework of eligible securities and different currencies are eligible in most collateral schedules.

Haircuts are also often applied to cover the exchange risk.

85. Do you foresee any issues on reporting the specified information for individual securities or commodities provided as collateral? If yes, please elaborate.

Similarly to our reply to Q84, in the case of tri-party and agency services, the counterparty is likely to specify the instruments (or their type or grade) that can be accepted or delivered as collateral, it probably will receive information as to the actual instruments on a periodic basis only.

Additionally, we are surprised that ESMA asks for reporting data that could appear as redundant with existing information. We believe that the ISIN code (field 4) is sufficient to identify a security and get such information as maturity (field 15).

With reference to the collateral market value, we do not consider it appropriate to apply the IFRS13 methodology as envisaged in para. 219 as these standards are not universally adopted.

Valuation should be carried out applying the methodology requested by the regulation that applies to the counterparties.

In addition, we would like ESMA to clarify some elements:

- the purpose for requiring the issuer LEI:
We strongly believe that the list of required information should be limited to those information that are strictly necessary. Therefore, we deem sufficient that the ISIN is sufficient to identify a security, also as collateral element. We then consider that the Issuer LEI can be derived from existing regulatory database and should therefore not be requested.
- the price that should be provided given that it is not an execution price.

Collateral is provided for the total exposure and not for a single SFT. We think it should be sufficient to report only the Collateral Market Value. In Germany, normally, all SFTs are over-collateralized. Management companies are obliged to immediately report any under-collateralization to the German NCA BaFin.

Furthermore, management companies apply a haircut strategy on top of the over-collateralization on a voluntary basis. The reporting of individual haircuts is a huge burden for the fund management companies. According to security loan transactions, Collateral Annexes have up to 30 pages listing classes of assets and haircuts are negotiated individually with all counterparties. It is obviously that the implementation of different haircut policies to be reported to TRs is very complex and burdensome.

Therefore, the reporting of haircuts should not be made mandatory for the reporting entities.

ESMA should take into account that the ESMA's Guidelines on ETFs and other UCITS issues (para 46) requires that UCITS (and in Germany AIFs) needs to set up a clear haircut policy for each class of assets received as collateral (it does not differ between OTC derivatives or other types of transactions as collateralized transaction). The ESAs published a RTS on Article 11 of EMIR on March 8, 2016.³ According to this RTS the ESAs have included tight requirements for the calculation of haircuts. In light of the ESMA's Guidelines, those requirements will also automatically apply to haircuts considered with respect to SFTs. This can be seen as an additional reason, why it should be sufficient to report market value of collateral as well as the value of the obligation that is collateralized.

86. *Are there any situations in which there can be multiple haircuts (one per each collateral element) for a given SFT? Please elaborate.*

We consider it as a safe practice to apply different haircut rates to different types of asset and at different moments of their lifecycle.

For example, there are different haircut by

- Type of collateral (cash, securities, other)
- Issuer of the collateral (government, supranational, corporates, etc.);
- Remaining time to maturity;
- Cross-currency;
- Last trade date; etc.

Additionally, typically, asset managers' collateral policy provides for a general overcollateralization and then defines coefficients to be applied to different types of collateral provided.

88. *Are there cases where a counterparty to a repo, including those executed against a collateral pool, would not be able to provide the collateral with the initial reporting of the repo trade? If yes, please explain.*

As mentioned in our responses to Q21 and Q72, we believe there are instances where the counterparty will not know the detail of the collateral until the settlement date, which will not be within the initial reporting timeframe.

We therefore believe that collateral reporting should not commence until the business day following settlement (S+1).

89. Are there any issues to report the collateral allocation based on the aforementioned approach? Please elaborate.

In the case of value date collateral allocation, it would be burdensome and operationally complex to report on to different occasions: the trade date and the settlement date

91. Which option for reporting of collateral would be in your opinion easier to implement, i.e. always reporting of collateral in a separate message (option 2) or reporting of collateral together with other transaction data when the collateral is known by the reporting deadline (option 1)?

Neither option is easy:

- EMIR is a consolidated collateral value at LEI level,
- The discussion paper suggest to have a "line by line" collateral reporting associated with each transactions.

Therefore the level of information is very different.

Consequently, we would appreciate clarification to understand either options if multiple lines reported against the same UTI.

Should ESMA nevertheless decides to move forward, we believe ESMA should adopt option 2 (with the four collateral fields also moved from the counterparty data table), which would

- detach it from the counterparty/transaction data;
- allow deferred reporting as appropriate;
- without interfering with the counterparty/transaction data reporting logic.

93. Do you foresee any challenges with the proposed approach for reporting updates to collateral? What alternatives would you propose? Please elaborate.

We fully agree with ESMA's proposal to report the full snapshot rather than a delta.

Additionally, we would prefer to report collateral each day and, if any line of collateral has changed, we would like it to overwrite previous collateral (fresh load of collateral each day overwrite previous day)

94. Is it possible to link the reports on changes in collateral resulting from the net exposure to the original SFT transactions via a unique portfolio identifier, which could be added to the original transactions when they are reported?

In line with our reply to Q93, we do not want to report changes but would strongly prefer a "fresh load each day"

Counterparties take a global view of their transactions and collateral is usually managed at the level of the position existing between two entities.

97. What would you deem to be the appropriate option to uniquely link collateral to the exposure of several SFTs? Are you using any pro-rata allocation for internal purposes? What is the current market practice for linking a set of collateralised trades with a collateral portfolio? Please elaborate.

The current practise is to use internal references.

Nevertheless, from an EFAMA's perspective and in line with our support the standardisation of identifiers, we believe that the use of UTIs would be beneficial, also to the repo industry.

98. Do you foresee any issues between the logic for linking collateral data and the reporting of SFT loan data? Please elaborate.

We recommend that only one counterparty be required to report the detail of the collateral according to the following logic:

Repo and reverse repo =	Collateral Giver
Buy-sell back and sell-buy-back =	Collateral Giver
Securities lending =	Collateral Giver (the borrower of the securities)

104. What are the metrics used (other than LTV ratios) to monitor leverage from margin lending, and more broadly to address risks related to the value of collateral? How are these calculated?

We consider that there is no leverage in that context.

As far as ESMA has in mind the collateralization of claims, a collateral taker (lender) has against the collateral giver (borrower), there are no fixed metrics. Those claims are collateralized via a pledge or a transfer of title and the pledge automatically exists to the extent of the collateralized obligation.

However, if ESMA refers to derivatives as instrument for leveraging, it should consider for UCITS and other regulated investment funds that they are subject to

- the cover rule; as well as
- a limit for leverage.

113. What options exist to link collateral that is re-used to a given SFT or counterparty? Please document the potential issues.

We do think that it is difficult to follow an SFT per SFT approach as collateral is more and more managed at a consolidated level for securities lending transactions.

Furthermore, we insist on the fact that re-use is a non-existing issue for UCITS which are prevented on the one hand to reuse collateral received and strictly limited when it comes to reinvest cash collateral and on the other hand have to forbid depositories to (re-) use their assets, according to ESMA Guidelines on ETFs (see above for references).

123. Do you envisage any difficulties with identifying the place of settlement?

The settlement is made by the depository of the fund.

Therefore the information might not be available at the time of the negotiation and might delay reporting.

124. Are there any practical difficulties with identifying CSDs and indirect or direct participants as well as, if applicable, settlement internalisers in the SFT reports? Would this information be available by the reporting deadline? Please elaborate.

As for the place of settlement, this information will be confirmed at a later stage than at the time of the negotiation.

This implies the creation of a delay of processing when comparing with data that are directly confirmed at the time of the negotiation.

125. Will this information be available by the reporting deadline? What are the costs of providing this information?

All financial details and counterparty identity, as well as the information on the CSD will be known on the day of the trading ("T").

If the securities delivered against the repo are required, then it would not always be possible to meet the reporting deadline as the asset manager will only know the collateral received on a settlement date.

We are here again concerned with the amount of information to be reported: it is not only the master agreement (field 10) applying for a SFT but its version (field 11) and the application of annexes (field 12).

We consider that those two additional requirements are increasing the number of fields without reaching any risk control objectives.

Indeed, should the aim be to report the type of master agreement to assess e.g. the termination conditions, in practice, all those criteria are subject to negotiations and possible amendments.

126. What other data elements are needed to achieve the required supervisory objectives? Please elaborate.

We strongly believe that there should be a clear difference between fields:

- Mandatory ones, that are necessary to ensure appropriate risk analysis;
- Important ones, that are useful but that would not trigger rebuttal of the reporting; and
- For information only as they are superfluous when considering other fields that provide non ambiguous data enabling to easily access complementary related information.

We estimate that the list of non-mandatory fields could be enlarged but the list of mandatory fields should be reduced to those which are absolutely necessary.

129. Do you agree with the proposed types of validations? Would you include any further validations? If so which ones? Please elaborate.

We experienced on EMIR a lack of transparency with respect to the validations made by the Trade Repositories: in case of rejection, we have no information on the rationale for rejection or to the specific data that caused the rejection of the reporting

We believe that the communication of the reasons of such rejection should be beneficial to improve the quality of the reporting.

Based on this experience, we would therefore encourage developments at the level of the trade repositories to be also applicable to SFTs.

Brussels, 25 April 2016

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