EFAMA's reply to ESMA's Consultation Paper on Guidelines for reporting under Articles 4 and 12 SFTR

29 July 2019

Questions:

Q1 : Do you agree with the above assessment? Are there any other transactions for which clarification is needed? Please detail the reasons for your response.

Yes, EFAMA agrees with the assessment.

Q2 : Do you agree with the approach set out for reporting of SFTs under Article 4 of SFTR as detailed above? Please detail the reasons for your response.

With respect to investment funds established under contractual form (e.g. FCPs, trusts …), the asset management company is the contractual party to the SFT, acting for the joint account of the investors of the relevant investment fund. In some jurisdictions, the asset management company is acting as agent of the joint group of investors of the relevant fund. Both examples show that para. 48 of the Consultation Paper is not precise enough. Furthermore, it is not clear why ESMA refers to the speciality of sub-funds in para. 52 without considering the basic case at all.

It is our understanding that ESMA's goal is that reports under SFTR be made in the same manner as under EMIR. To achieve this objective, which we support, we would recommend a simple addition to para. 48 stating that investment funds are deemed to be counterparties to a SFT regardless of their legal nature, which is in line with the existing practice under the EMIR reporting regime. This would also bridge to para. 52, explaining the treatment of sub-funds.

Q3 : Do you agree with the approach for reporting repos and reverse repos as detailed in this section? Please detail the reasons for your response

Yes.

Q4 : Are there any other types of repos and reverse repos transactions for which reporting needs to be clarified? Please detail the reasons for your response.

No.

Q5 : Are there any other aspects on reporting of master agreements or other elements of BSB/SBB that need to be clarified? Please detail the reasons for your response.

No.

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Q6 : Do you foresee any issues relating to the non-availability of information on the counterparties and the securities by T+1? Please detail the reasons for your response.

No. Asset Managers and their agents, if any, should be aware of the investment fund lending securities before entering into the SLB.

Q7 : To what extent the SFTs that are cancelled and replaced bear price-forming information, i.e. does the cancellation imply an additional fee or price charged? If so, how can this information be better included in the reports? Please detail the reasons for your response.

The termination of a SLB does not have any impact on the lending fee. The lending fee is initially agreed and remains applicable until the end of the transaction. Any transaction following the terminated one is subject to new negotiations and the lending fee agreed regarding that new transaction. Even if the same ISIN is to be lent to the same counterparty after the termination of the former transaction concerning that ISIN, it is a new price not being influenced by the price applied to the preceding transaction. Instead, when negotiating the lending fee of the new transaction, aspects like the current availability of that ISIN in the market or its price volatility or the volume offered are impacting the lending fee of the new transaction.

In case a SLB is agreed, but not settled and cancelled, there are no costs resulting from that cancellation. It is market practice that if the settlement did not take place, no fees or costs are arising from that SLB.

Q8 : Which approach would you favour in terms of reporting cash-driven SLB? Please detail the reasons for your response.

According to ESMA's Guidelines on ETF's and other UCITS issues, UCITS – and in certain jurisdictions AIFs as well - are prevented from making use of any cash proceeds (liquidity) received under a SFT. EFAMA continues to believe that it is a wrong approach as it creates an unlevel playing field and because liquidity gained via such sources would prevent risks of fire sales in stressed markets. We therefore strongly encourage ESMA to review that restriction by reviewing the aforementioned guidelines. It would be extremely useful if ESMA could clarify their intentions and time plan in this regard.

If ESMA intends to re-allow UCITS to gain access to liquidity via repos (purchase price, not VM) for other purposes than those currently determined in para. 43j of said guidelines (in particular fund unit redemptions and cash collateral contributions), it would be very useful for market participants to know about that intention at ESMA's earliest convenience. Market participants are currently running SFTR implementation projects. Gaining back access to liquidity via repos for purposes required by the investment fund industry would be very much welcomed by the industry but would also need to be taken into account in their SFTR implementation projects. Implementing those requirements after those projects have been completed does not only lead to delays but would also create additional costs.

However, having said this, we do not have any experience with cash-driven SLB. The key difference between SLB and Repos / BSB is the item a counterparty is paying for. At SLB, one counterparty is interested in a particular ISIN and pays for it (lending fee); At Repos/BSB, one counterparty is interested in liquidity and therefore pays for liquidity/cash (repo fee / increased re-purchase price).

Q9 : Do you agree with the proposal with regards to reporting of SFTs involving commodities? What other aspects should be clarified with regards to these SFTs? Please detail the reasons for your response.

We are not aware of members who are engaged in SFTs involving commodities.

Q10 : Are there any aspects that need to be clarified with regards to this type of SFTs? Please detail the reasons for your response.

We are not aware of members who are engaged in this kind of SFTs.

Q11 : Do you agree with the proposal with regards to reporting of margin lending? What other aspects should be clarified with regards to these SFTs? Please detail the reasons for your response.

We are not aware of members who are engaged in this kind of SFTs.

Q12 : Having in mind that position reporting of CCP-cleared SFTs is optional only when transaction-level reporting was made in accordance with paragraph 84, do you believe that additional clarifications need to be provided by ESMA? Please detail the reasons for your response.

We would invite ESMA to evaluate whether it would be sufficient to report the cleared transaction only, at least where clearing takes place shortly after concluding the initial transaction. We do not see a qualitative difference to the give-up's described in para. 44. At give-up's, the Executing Broker is replaced by the Clearing broker as party to the transaction. This change of counterparties takes place within seconds after the conclusion of the transaction.

Q13 : Do you agree with the approach regarding allocation of responsibility with regards to SFTs concluded between TC-FC and EU SME-NFC? Please detail the reasons for your response.

Yes.

Q14 : Do you agree with the approach regarding allocation of responsibility with regards to UCITS management company and AIFM, established in third country? Please detail the reasons for your response.

Concerning the outsourcing of portfolio management of a UCITS or AIF, we believe that the responsibility for the reporting obligation should always remain with the outsourcing manager of the UCITS or AIF, unless reporting itself has been delegated by it to another party.

However, we believe that it would be useful to clarify in the guidelines that (i) the starting point under SFTR is that AIFs established in a third country are out of scope, by virtue of SFTR Article 2(1)(a), regardless of the location or the status of the AIFM under AIFMD; (ii) such differs from EMIR, which limits the scope simply to FC's and NFCs as defined in EMIR Article 2, where FC includes AIFs that are either established in the Union or where the AIFM is authorized or registered under AIFMD (regardless of the location of the AIF); (iii) some Member States may nonetheless require AIFMs authorized/registered there to report also for their third country AIFs (like EMIR).

Q15 : Do you agree with the approach for determining conclusion of SFTs by EU branches of non-EU entities? Are there any other instances in addition to the ones in paragraph 102 that would need to be clarified? Please detail the reasons for your response.

Yes.

Q16 : Is the proposed guidance for determining whether an SFT conducted by a branch needs to be reported clear and comprehensive? Which areas require further clarification? Please detail the reasons for your response.

Yes.

Q17 : Is the proposed guidance for reporting of intragroup SFTs clear and comprehensive? Which areas require further clarification? Please detail the reasons for your response.

Yes.

Q18 : Do you agree with the approach for reporting by NFCs? Is there any additional aspect relating to reporting by NFCs that needs to be clarified? Please detail the reasons for your response.

Q19 : Do you agree with the proposal for reporting conclusion of SFTs? Please detail the reasons for your response.

Yes. In case a SFT is agreed but not settled and therefore cancelled, it is market practice that no costs result from that cancellation. Against this background, if SFTs are cancelled following a failed settlement, an ERROR should be reported.

However, it is unclear if table 5 (p.37) applies only to SFTs which have been concluded too late. We would therefore encourage ESMA to clarify if the action type 'ERROR' should be used in case of a previously concluded SFT that was subsequently cancelled or not completed.

Q20 : Do you agree with the proposal for reporting modifications to SFTs? Please detail the reasons for your response.

In principle yes.

However, the proposal considers reporting the event date of the modification as the effective date. ESMA states, that "counterparties should report only the modification that have TAKEN PLACE". In the case of a partial return, the event date shall be the contractual settlement date. One must bear in mind cases where the partial return fails, is delayed or cancelled 1-2 days after the planned settlement date (agreed between the two counterparts). For such cases it is not clear how those occasions shall be considered in reports under SFTR. In particular, it is unclear, how "TAKEN PLACE" (citation above) is to be interpreted.

It is our understanding that the meaning of "Taken place" may differ from case to case, depending on ESMA's further evaluations prior the publication of the final version of the guidelines.

Based on discussions during the 16 July workshop, we would summarise our understanding as follows and kindly ask ESMA to confirm this interpretation in the guidelines:

> A. Where Securities Loan Transactions with a fix term are terminated before the Maturity Date that has been agreed earlier, counterparties shall report a MODI of the Maturity Date but not ETRM.
>
> B. Where Securities Loan Transactions with unlimited term are terminated, a Maturity Date shall not be reported. Instead the termination (ETRM, please see page 33 of the consultation paper) shall be reported on t+1 only after the termination took effect (which is not the moment at which one counterparty has received the termination notice from the other party but the moment at which the transaction ceased to exist). Such practice would allow parties to cancel a termination even on the last day of the term. If the Securities Loan Transaction does not terminate due to such an agreement between the parties (after a termination notice had been sent out before), there is no MODI to be reported by the counterparties.
>
> C. In case of so-called partial returns the above applies accordingly. That means any MODI of Quantity or Notional Amount shall only be reported to the extent that the Lender has received back the securities lent. Such practice would allow parties to cancel a partial return even on the last day of the term. If the partial return does not take place due to a settlement fail and followed by an agreement between the parties (after a termination notice had been sent out before) that such partial return shall not take place any further, there is no MODI to be reported by the counterparties.
>
> D. Should a party terminate the whole master agreement, governing all transactions under it, following the counterparties default or any other termination event, Parties shall be required to report ETRM regarding each transaction terminating for that reason. Any further development beyond that point shall not be subject to a reporting requirement. That in particular refers to actions during the close-out netting.

ESMA may however which to consider the following additional concerns that have been raised by some of our members following the clarifications made by ESMA during the workshop:

In general, we understand the above to be a smart solution circumventing any problems that might occur if instead sending or receiving the termination notice or agreeing on the termination of a Securities Loan Transactions with unlimited term would trigger a reporting action of the parties (because MODI cannot follow ETRM).

However, with regards to investment funds, one should also bear in mind that the asset management company is not allowed to take securities forming part of the investment fund into custody. This falls within the responsibility and business allowance of the custodial bank. Asset managers may face difficulties in acquiring knowledge about the receipt of securities returned from borrower to lender with delay. Many asset managers do not have a real time view on movements in the bookings of the custodial bank or their

sub-custodians. Against this background, defining the trigger as the receipt of securities transferred back from lender to borrower may create new operational burdens that cannot be solved in time.

In order to avoid those operational issues it might make sense to change this trigger and define it as the moment at which it is clear for both parties that there is no need to cancel a termination or partial return. It would be another alternative to allow the sequence of MODI after ETRM.

Finally, we would like to point out that where the lender decides to cancel the termination of a securities loan transaction, it does not necessarily result in an increase of risk, as collateral has been provided and will be called where required like during the term of the transaction before the termination had been noticed and cancelled.

Q21 : Do you agree with the proposal for reporting collateral updates to SFTs? Please detail the reasons for your response.

It is important to take into consideration that collateral may be replaced by new collateral multiple times per day. One should bear in mind that a replacement does not lead to an under-collateralisation. SFTs with multiple collateral replacements per day are making the transaction sounder, as they can reflect intraday market movements. One could understand it, where applied, as an intra-day margining. However, requiring counterparties to report any replacement would create an incentive to avoid replacements, which would damage collateral allocation systems (TriParty). Against this background, we would invite ESMA to clarify that only the end of day collateral received or posted should be reported.

Additionally, the consultation paper leaves it open whether reports shall refer to the agreed settlement time or the time at which settlement takes place. It is our understanding that the meaning of "Taken place" may differ from case to case, subject to ESMA's further evaluations prior the publication of the final version of the guidelines.

It would be our understanding that COLU reports should not be filed before the new collateral has been received.

<u>Example 1:</u>

Bank (B) borrows from UCITS (U) 100 stocks. Haircut on collateral is zero. The agreement is dated 18 June. Settlement shall take place on 20 June. B fails to provide collateral on 20 June and in consequence U does not deliver the securities lent to B.

<u>Report(s) required:</u>
Art. 4 para. 1 requires counterparties to report the conclusion of the transaction on t+1. Insofar there seems to be no way around sending a NEWT on 19 June – even if no settlement took place at that time. According to the same provision, the report shall consider the details of the SFT.

Taking into account the discussions at ESMAs workshop on June 16, 2019 no report is to be made in respect of collateral, in particular no COLU.

Example 2:

Bank (B) borrows from UCITS (U) 100 stocks (value 100). Haircut on collateral is zero. The agreement is dated 18 June. Settlement shall take place on 20 June. B fails to provide collateral on 20 June and in consequence U does not deliver the securities lent to B. On 20 June B announces to deliver on 21 June the following collateral: 50 ISIN 1 (value 50), 30 ISIN 2 (value 30) and 20 ISIN 3 (value 20).

On 21 June, B delivers to U the following collateral: 50 ISIN 1 (value 50), 30 ISIN 2 (value 30). On 22 June, B delivers to U further collateral: 20 ISIN 4 (value 20) and U delivers to B the 100 stocks (value still 100).

Report(s) required:
On 19 June NEWT.

On 22 June COLU with values 50+30.

On 23 June COLU is reported with 50 ISIN 1 (value 50), 30 ISIN 2 (value 30) and 20 ISIN 4 (value 20).

Q22 : Do you have any issues with reporting in a timely manner valuation, margin and reuse updates pertaining to SFTs? Please detail the reasons for your response.

It is important to take into consideration that collateral may be replaced by new collateral multiple times per day. One should bear in mind that a replacement does not lead to an under-collateralisation. SFTs with multiple collateral replacements per day can make the transaction sounder as they can reflect market movements. However, requiring counterparties to report any replacement would set an incentive to avoid replacements which in particular would damage collateral allocation systems (TriParty). Against this background, we would invite ESMA to clarify that only the end of day collateral received or posted should be reported.

Besides that general remark, we would like to draw the attention to the fact that the possibility to report in a timely manner very much aligns with the moment that shall trigger the report.

It would be our understanding that COLU reports shall not be filed before new collateral has been received. However, with regards to investment funds, one should bear in mind that the asset management company is not allowed to take securities forming part of the investment fund into custody. This falls within the responsibility and business allowance of the custodial bank. Asset managers may face the problem of getting knowledge about the receipt of collateral immediately after its receipt. Against that background, making the receipt of collateral the reporting trigger may create new operational burdens that cannot be solved in time. In order to avoid those operational issues it might make sense to change the reporting trigger and define it as the moment at which a party gets knowledge about the collateral update.

Q23 : Do TRs require additional guidance in relation to how reports submitted by the entities mentioned in Article 2(2) and (3) of SFTR should be treated and the relevant procedures to follow? If so please confirm where further guidance is required.

Q24 : Do you agree with the proposed rules for reporting of field 1.17? Are there any other instances that would need to be clarified? Please detail the reasons for your answer.

Yes, we agree.

Q25 : Do you consider proposal A or proposal B to be the most efficient way to ensure that details of SFTs are reported accurately, and why? What would be the costs and benefits of each approach? Please detail the reasons for your response.

Our preference is for Proposal A.

From a technical point of view, it is much easier to report a snapshot of a SFT than a delta. A delta would imply that each reporting field needs to be checked for changes which again requires much more computing efforts. Furthermore, the reporting of a snapshot provides a full picture of the SFT, which can be used as proof that the fields which have not been altered are still correctly reported.

Q26 : Do you agree with the sequences proposed? Please detail the reasons for your response.

Table 2:

In case a full return is cancelled, the logic followed by ESMA would not support this scenario properly. Securities lending markets are quite often impacted by settlement fails. It happens from time to time that a full return of a securities lending transaction is agreed and booked rather than settling on contractual settlement date.

If a full return (following a termination) is not settling as expected, it could result in a cancellation of the termination / return, subject to an additional agreement between the counterparties. This may be motivated by the fact that the borrower requires the loaned security again or struggles having the borrowed securities available for their return to the lender. The latter cannot be anticipated.

It would be our understanding that the termination of the SLB with unlimited term itself would be reported as ETRM. The cancellation of the termination would lead to the circumstance that the position is being reopened triggering a sequence of ETRM → MODI.

Booking a new trade instead would not make sense in an operational manner as no settlement would be required for such trade (the lender has already received collateral and the borrower has already received the securities lent). Furthermore a linkage between the old trade and the new trade front-to-back would be required in order to understand why a trade was closed and a new trade was opened without a settlement. This would cause additional burden on the reporting counterparties and would be impossible to implement in time.

The only sequence currently planned to be allowed by ESMA would be CORR after an ETRM. This however would not reflect properly the economic reason behind the cancellation, as ESMA defines a CORR as "erroneous data field".

We would summarise our understanding as follows and kindly ask ESMA to confirm it in their guidelines:

A. Where Securities Loan Transactions with a fix term are terminated before the Maturity Date that has been agreed earlier, counterparties shall report a MODI of the Maturity Date but not ETRM.

B. Where Securities Loan Transactions with unlimited term are terminated, a Maturity Date shall not be reported. Instead the termination (ETRM, please see page 33 of the consultation paper) shall be reported on t+1 only after the termination took effect (which is not the moment at which one counterparty has received the termination notice from the other party but the moment at which the transaction ceased to exist – or should it be the date on which the Lender has received back from the Borrower the securities lent?). Such practice would allow parties to cancel a termination even on the last day of the term. If the Securities Loan Transaction does not terminate due to such an agreement between the parties to go ahead with the transaction (after a termination notice had been sent out before), there is no MODI to be reported by the counterparties.

C. In case of so-called partial returns the above applies accordingly. That means any MODI of Quantity or Notional Amount shall only be reported to the extent that the Lender has received back the securities lent. Such practice would allow parties to cancel a partial return even on the last day of the term. If the partial return does not take place due to a settlement fail and followed by an agreement between the parties (after a termination notice had been sent out before) that such partial return shall not take place any further, there is no MODI to be reported by the counterparties.

D. Should a party terminate the whole master agreement, governing all transactions under it, following the counterparties default or any other termination event, Parties shall be required to report ETRM regarding each transaction terminating for that reason. Any further development beyond that point shall not be subject to a reporting requirement. That in particular refers to actions during the close-out netting.

ESMA may also wish to consider the following additional concerns that have been raised by some of our members:

In general, we understand the above to be a smart solution circumventing any problems that might occur if instead sending or receiving the termination notice or agreeing on the termination of a Securities Loan Transactions with unlimited term would trigger a reporting action of the parties (because MODI cannot follow ETRM).

However, with regards to investment funds, one should bear in mind that the asset management company is not allowed to take securities forming part of the investment fund into custody. This falls within the responsibility and business allowance of the custodial bank. Asset managers may face the problem of getting knowledge about the receipt of securities returned from borrower to lender with delay. Many asset managers do not have a real time view on movements in the bookings of the custodial bank or their sub-custodians. Against this background, making defining the reporting trigger as the receipt of securities transferred back from lender to borrower may create new operational burdens that cannot be solved in time.

In order to avoid those operational issues it might make sense to change the trigger and define it as the moment at which it is clear for both parties that there is no need to cancel a termination or partial return. This might be a confirmation by the custodial bank or the reception of their report, or where available a real time view on the custodial bank's bookings (including those of any sub-custodians).

Another alternative would consist in extending the validation of the action type Sequence MODI after an ETRM:

Table 2- Counterparty, Loan and Collateral Data	New	Error	Termination/Early Termination	**Modification**	Valuation Update	Collateral Update	Correction
Termination/Early termination		x		x			X

Sequence between action types for the different types of messages: Table 2: Action Type Error

We believe that ESMA should be as precise as possible and should cover in the guidelines all mentioned cases and variants. Any lack of clarity could result in deviating reports by the counterparties.
Furthermore, we would encourage ESMA to also consider experiences gained from EMIR. In particular we would like to draw ESMA's attention to the usage of action type "Error". We fear that the application of the action type "Error" could be used differently by the reporting entities to a trade repository. Such use cases have appeared under the EMIR reporting obligation whereby one counterparty reports the SFT as "Error" which then prevented the other reporting entity from continuing to report with the same UTI.

We do not exactly know if the application of an error applies only to one-side or to both reporting counterparties. For example, counterparty A could error their report (e.g. if it was incorrectly submitted for an entity not in scope) but counterparty B could continue to report the UTI.

With this in mind, we encourage ESMA to provide further guidance on the usage of the action type "Error".

Q27 : Do you agree with the proposed mapping between business events and action types? Are there any additional business events that should be included? Please detail the reasons for your answer.

Generally, yes. In particular, we support the table circulated during ESMAs 16 July workshop and considering the business events determined by ISLA.

However, as ESMA already mentioned, there are a couple of cases where it shall be the settlement that took place which triggers a report rather than the agreement in advance. This does not answer the question as to when the settlement - or the moment a party gets knowledge about the successful settlement - shall be relevant, but not the agreement on such settlement. This would be of relevance at least for the following business cases:

- When an opening settlement fails:

The case that a lender or borrower cannot deliver the security/collateral does not automatically mean that a trade is cancelled or rebooked. To correctly reflect market practice and exposure the following two scenarios should be considered:

Opening fails → trade is still open and the value date is adjusted once trade really settles. According to the discussions that took place during ESMA's workshop on 16 July, it would be our understanding that nothing is to be reported with regard to the agreed postponement. Therefore, the only report would be:

- NEWT (t+1 after the transaction has been agreed)

Opening fails → Agreement between the counterparties that the deal shall be cancelled due to e.g. economic reasons. According to the discussions that took place during ESMA's workshop on 16 July, it would be our understanding that the following report would be required:

- NEWT (t+1 after the transaction has been agreed))
- EROR (t+1 after the cancellation date)

- When the settlement of a partial return fails:

There are two scenarios:

a) The trade is still open with the agreed reduced quantity. If the partial return settles delayed, event date of the deal will be adjusted once the trade really settles.

According to the discussions that took place during ESMA's workshop on 16 July, it would be our understanding that the following report would be required:

- MODI (for the partial return, on t+1 after the securities lent, subject to the reduction, are provided back to lender)

b) Agreement between the counterparties that the partial return shall be cancelled.

According to the discussions that took place during ESMA's workshop on 16 July, it would be our understanding that the following report would be required:

- No report, because the lender did not get back any of the securities lent and therefore the agreed (and afterwards cancelled) partial return did never take place

- When full return of a settlement fails:

There are two scenarios:

a) Trade has been terminated and settles delayed.

According to the discussions that took place during ESMA's workshop on 16 July, it would be our understanding that the following report would be required:

- ETRM (on t+1 after the lender received back the securities lent)

- In case of securities loan transactions with a fix term, MODI regarding the maturity date (on t+1 after the lender received back the securities lent).

b) Trade has been terminated and both counterparties agree to re-open the deal, i.e. the full return is cancelled.

According to the discussions that took place during ESMA's workshop on 16 July, it would be our understanding that the following report would be required:

- No report required
- In case of securities loan transactions with a fix term, MODI regarding the maturity date (on t+1 after the lender received back the securities lent).

A. Business Event - Extension Repo --> Reportable action type: MODI

When a repo is extended NOT in the sense of an evergreen or an extendable repo, in practice the deal is booked as a new deal.

We suggest ESMA to change the rollover of a repo as reportable action type: NEWT as this would correctly reflect how the market works.

Q28 : Are there any other relationships that would need to be defined? If so, please detail which ones.

Yes. "Haircut and margin renegotiation" takes place at the level of the Master Agreement but not at the level of the single transaction. We would welcome clarification from ESMA as to how this should be reported for existing and new transactions.

Another point of clarification is how to treat collateral posted for which no amendments apply different to other ISINs for which a new haircut has been defined in the updated Master Agreement.

Q29 : Is there any aspect not covered by the ITS on reporting that would require further clarification? Please detail the reasons for your response.

No.

Q30 : Do you agree with the proposed approach for reporting of counterparty side in the case of CCP-cleared SFTs? Please detail the reasons for your response.

Yes.

Q31 : Do you agree with the proposed approach to determine which side of a transaction is the collateral provider and which is the collateral taker for unsecured lending/borrowing of securities? Please detail the reasons for your response.

Yes.

Q32 : Please indicate how frequently is a haircut, margin or any other type of discount/add-on, applied to the loan side of SLB?

During the16 July workshop, ESMA indicated its preliminary view that add ons applied to the loan side of SLB (in particular mandatory for UCITS in Germany and possibly further member states) shall not be considered.

It would be useful if ESMA could further elaborate on that aspect and take a more differentiated view in order to avoid problems for financial markets:

Explaining add ons by example of the legal situation in Germany, ESMA should be aware that UCITS when entering into SLB must agree with their counterparties on ad ons to the loan side by which the value of the securities lent (together with any other claim under the SLB) is deemed to be higher (Sec. 200 para. 3 of the German Capital Investment Code "KAGB"). Currently this add on is set by market participants around 3.1 %. Besides UCITS consider haircuts in order to further mitigate the counterparty risk (ESMAs Guidelines on ETF and other UCITS issues have been implemented via the German Derivatives Regulation). In practice collateralisation considers automated processes (IT systems) which can only process haircuts as method to create over-collateralisation. Against this background it has been established a solution by market participants to "merge" add ons and haircuts into one number which can be fed to IT systems. That means if an add on of 3.1% shall apply and the UCITS counterparty decides to collateralise the transaction with a government bond to which a haircut of 1% shall apply, the IT systems would consider a haircut of 3.1 %. Where the counterparty decides to collateralise the transaction with Russian stocks with a haircut of 20% the "merged" haircut, considering the mandatory add on, which would be fed into the IT system, is 20%. The volume of over-collateralisation resulting from the application of a haircut on the Russian stock would exceed the volume of overcollateralization required under § 200 para. 3 KAGB.

If ESMA would insist on having the haircut clean of any add ons that are applied on the loan side, this would harm German UCITS. The technical effects of such view may ban German UCITS from security lending markets. We understand that European regulation should not discriminate and there we believe that ESMA should allow "merged haircuts" to be reported as haircuts. Such would not misleading as reports would show the real level of over-collateralization.

Besides the above add on there is another provision which at least applies to German UCITS. According to § 200 para. 3 KAGB a UCITS must agree with its counterparty that it is entitled to ask for additional collateral where economic condition of the UCITS' counterparty become worse. Since this kind of add on is not included in the "merged haircut", we believe that it should just be considered by reporting the increase value of collateral posted following such an additional margin call of UCITS.

General amendments of the haircuts regarding the assets posted as collateral by the borrower are happening more often and take place on level of the master agreement. The frequency can be described

as once every 2 or 3 years, taking into account aspects like the liquidity and volatility of those assets. It is also common to refer to haircuts applied by the ECB. In that regard the frequency depends on how the ECB acts and would be considered automatically without amending the master agreement.

Q33 : Do you agree with the proposed approach? Please detail the reasons for your response.

No. The final price does not include such collateral related aspects (if reference is made here to the lending fee). If reference is made to the value of the security lent, it is not subject to a negotiation (differing from a repo). It is just the current market value. We would invite ESMA to further evaluate this issue, considering also our response to Q 32.

Q34 : Do you agree with the proposed approach? Please detail the reasons for your response.
Generally, we consider this to be a good solution. Counterparties would use the value which is anyway considered when determining whether a margin call is to be made.

However, tolerance of market value as reconciliation field should be set higher than 0.0005%. Not only price differences resulting from different sources and cut off time but also differences in the fx rates for conversion of the market price into loan currency, can lead to larger differences in the reportings of the two counterparties.

Another solution would be to allow to report the Market Value in the securities Currency. Either the currency is included in the xml tag for this value or TR can retrieve this information via the reported ISIN.

Q35 : Do you agree with the proposed approach on timing and use of FX rates? Please detail the reasons for your response.

Yes.

Q36 : Does ESMA need to provide additional guidance on the reporting of the valuation fields? Please detail the reasons for your response.

No.

Q37 : Do you have any remarks concerning the reporting of CFI? What other aspects need to be clarified to ensure that reporting is consistently performed? Please detail the reasons for your response.

No.

Q38 : Do you agree with the approach for back-loading? What other aspects have to be considered to make the reporting of backloaded SFTs more efficient for counterparties and TRs, i.e. the costs of this approach are minimised and also the usefulness of the reports submitted going forward is maximised? Please detail the reasons for your response.

Generally, yes. However, we would like to point out that there is interest in reporting earlier than required and to backload more transactions than legally required. Such flexibility, if provided, would allow market participants to test implemented measures before their reports become mandatory. ESMA has already

expressed general support but also referred to NCAs which finally have to decide whether or not such voluntary reporting shall be accepted by TRs. We would very much appreciate if ESMA could coordinate a harmonised view of NCA's as kindly requested by the participants to the workshop.

Q39 : What other aspects with regards to the UTI have to be clarified? Please detail the reasons for your response.

Q40 : Are there any other instances that need to be clarified? Please elaborate on the reasons for your response.

Q41 : Please provide the relative volume of transactions for which issuer's LEI (of securities used as collateral) or ISIN is not available in principle.

Approx. 10% of the yearly trading volume does not have an Issuer LEI, i.e. roughly 700 out of 7600 SLB transactions

Q42 : Do you agree with this approach? What other aspects need to be considered? Please elaborate on the reasons for your response.

We have concerns with the approach for the implementation of the reporting start date as described in para. 187. "*The counterparties for which the reporting obligation has not yet started should provide to counterparty for which the reporting obligation has commenced with all the relevant information in accordance with the TS on reporting".*

Article 33(2)(a) SFTR provides that financial counterparties referred to in points (3)(c) to (f) of Article 3, including investments funds, must comply with the SFTR reporting obligation 18 months after the date of entry into force of the delegated act. Ahead of that date, such counterparties are expected to prepare their systems so that they will be ready to comply with the obligation on that date.
Where a contract is concluded between two counterparties with different reporting start dates, the date from which the counterparty which is not yet reporting should give information to the reporting counterparty should be the later date. Otherwise, the staggered approach set in Level 1 loses completely its meaning.

We are not in favour of the opportunity to bring forward the reporting obligation, because it could raise an expectation to report before the deadline and put undue pressure on not yet reporting counterparties.

Q43 : Do you believe there are other use cases that need to be further defined in this subsection? Do you agree with the applicability of those use cases to the different types of SFTs as outlined above? Please detail the reasons for your answers.

No.

Q44 : Do you agree with the population of the counterparty data fields? Please detail the reasons for your response and indicate the table to which your comments refer.

Yes.

Q45 : Do you agree with the approach to reporting action types? Please detail the reasons for your response and include a reference to the specific table.

Yes.

Q46 : Do you agree with the approach to reporting event date? Please detail the reasons for your response and include a reference to the specific table.

We would invite ESMA to clarify the term "takes place" in the guidelines. We see two possible interpretations:

1. A modification is booked with settlement/effective date on 23 August, which would be the event date. Therefore the modification must be reported latest on the 24 August, although the settlement fails.

2. A modification is booked with settlement/effective date on 23 August, which would be the event date. The report to the TR must be sent latest 1 day after the actual settlement takes place. I.e. when the modification settles as expected on the 23 August, the report of that modification is expected latest on the 24 August. Assuming the modification settles on the 25 August, the report to be sent to the TR must be made on 26 August latest. There will be no reporting on the 23 August or 24 August as no actual settlement takes place.

It would be our understanding that the latter is being preferred by ESMA.

Q47 : Do you agree with the approach to reporting clearing? Please detail the reasons for your response and include a reference to the specific table.

We would welcome further guidance from ESMA on table 49.

The use case is as follows:

Counterparty A is concluding an SLB with counterparty B via a trading platform, e.g. NGT. This is a bilateral agreement, details are sent to the CCP for clearing in a novation model on the same day.

In this respect, we assume that SFTR reporting follows the approach introduced by EMIR: Article 2 of CDR (EU) 2017/states that non-centrally cleared OTC contracts must be reported within T+1. If they are subsequently cleared by a CCP, that contract shall be reported with the action type "Early Termination", and new contracts resulting from clearing shall be reported. Therefore, several reports must be sent within T+1.

We further understand that the cleared SLB must be reported with a report tracking number, i.e. the UTI of the bilateral trade. This might lead to obstacles, depending on the operational process by each reporting

party: First, the UTI for the cleared SLB must be made available to the CCP in due time. Second, the originating bilateral SLB might be reported later than the cleared SLB.

ESMA should provide a clarification as regards the reporting of SLB that are novated the same day as well as the necessity of orderly reporting to the repositories.

Q48 : Do you agree with the approach to reporting trading venue field? Please detail the reasons for your response and include a reference to the specific table.

Yes.

Q49 : Do you have any remarks or questions concerning the reporting of master agreements? Please detail the reasons for your response and include a reference to the specific table.

Q50 : Do you agree with the approach to reporting conclusion and beginning of an SFT? Please detail the reasons for your response and include a reference to the specific table.

Yes.

Q51 : Do you agree with the approach to reporting term of the SFT? Please detail the reasons for your response and include a reference to the specific table.

Yes.

Q52 : Do you see any issues with the approach to reporting termination optionality? Please detail the reasons for your response and include a reference to the specific table.

Q53 : Which of these approaches do you favour for reporting general and specific collateral? Please detail the reasons for your response.

In our opinion, the options provided by ESMA do not support the field definition in the RTS, i.e.:

"Indication whether the secured financing transaction is subject to a general collateral arrangement. In the case of a securities lending transaction, the field refers to the securities provided as a collateral, and not to the security on loan.
-'GENE' shall be populated for general collateral. General collateral specifies a collateral arrangement for a transaction in which the collateral giver may choose the security to provide as collateral amongst a relatively wide range of securities meeting predefined criteria.
-'SPEC' shall be populated for specific collateral. Specific collateral specifies a collateral arrangement for a transaction in which the collateral taker requests a specific security commodity (individual ISIN) to be provided by the collateral provider."

Based on this definition, one would report GENE for all SLB and Repo transactions as the collateral matrix provided in the master agreement specifies a category of collaterals to be accepted within a range of

required ratings. When entering into a SLB, we only know that the collaterals will be matching the mentioned criteria, e.g. if it is a sovereign bond from country XYZ the rating must be at least BBB+. As it does not matter which collateral we receive as long as the quality of the securities fulfil the conditions laid down in the collateral matrix agreed with the counterparty.

If ESMA insists on the options suggested in the guidelines, our preference would be for option 2, i.e. leaving this field blank for SLB transactions, though we would prefer to report GENE, as this correctly reflects our collateral agreement.

Option 1 with default SPEC for SLB would, in our opinion, contradict the understanding we have and as mentioned the definition provided in the RTS.

Q54 : Do you agree with the approach to reporting collateral arrangements? Please detail the reasons for your response and include a reference to the specific table.

Q55 : Do you agree with the approach to reporting fixed and floating rates of SFTs? Please detail the reasons for your response and include a reference to the specific table.

Q56 : Do you see any issues with the approach to reporting repo and BSB/SBB principal amounts? Please detail the reasons for your response and include a reference to the specific table.

Q57 : Do you agree with the approach regarding reporting fields 2.51 and 2.90? Please elaborate on the reasons for your response.

The default option should be b., as an agreement on credit rating references with each counterparty will be not possible.
Assuming doing the first and detecting differences in the rating reference would mean that either party will adopt the other party's reference, which from a practical viewpoint will not be possible (or option b would come into effect).

Q58 : Do you agree with the approach to reporting securities on loan? Please detail the reasons for your response and include a reference to the specific table.

Yes.

Q59 : Do you agree with the approach to reporting SFTs involving commodities? Please detail the reasons for your response and include a reference to the specific table.

Yes.

Q60 : Do you agree with the approach to reporting cash rebate SLBs? Please detail the reasons for your response and include a reference to the specific table.

Yes.

Q61 : Do you agree with the approach to reporting non-cash collateral SLBs? Please detail the reasons for your response and include a reference to the specific table.

Yes

Q62 : Do you agree with the approach to reporting margin loan data? Please detail the reasons for your response and include a reference to the specific table.

Q63 : Do you agree with the approach to reporting collateralisation? Please detail the reasons for your response and include a reference to the specific table.

Yes

Q64 : Do you agree with the approach to reporting cash collateral? Please detail the reasons for your response and include a reference to the specific table.

Q65 : Do you agree with the proposed approach? Please detail the reasons for your response.

Yes

Q66 : Do you agree with the proposed approach for calculating collateral haircuts or margin? Please provide justification for your response.

Q67 : Do you agree with the proposed approach for reporting collateral type field? Please detail the reasons for your response.

Yes.

Q68 : Do you agree with the proposed approach for reporting Availability for collateral reuse? Please detail the reasons for your response.

Yes.

Q69 : Do you agree with the proposed approach for reporting fields Identification of security and LEI of issuer? Are you aware of instances where securities provided as collateral do not have an ISIN? Please detail the reasons for your response.

EFAMA is a strong supporter of the use of LEI and would therefore invite ESMA and other regulators from across the world to strongly encourage the relevant issuers without a valid LEI to obtain and keep the identification code before the reporting obligation kicks in.

However, the probability of absence of an ISSUER LEI is definitely higher for non-EU securities than for EU securities. The fact, that there still exists a lack in ISSUER LEI data makes it crucial for the reporting obligation as this is a reconciliation field.

For the above mentioned reasons, the vast majority of EFAMA members support the following approach:

We recommend to make this field optional as the non-availability of an ISSUER LEI would result in a rejection of the entire report though all other required data are complete. Given the legislator's intention to monitor the exposure, we believe it is more favourable to report the exposure without an ISSUER LEI than not receiving the exposure due to a missing ISSUER LEI.

Alternatively, we would suggest to keep the field as mandatory and to allow for a default value in case an ISSUE LEI is not available.

Otherwise, we fear that applying the "No LEI no trade" principle would be very harmful to financial markets and that it would not be in line with the investors interests because it would especially shrink the volume of securities loan transactions and therefore gains (lending fee).

Q70 : Do you agree with the proposed approach for reporting plain vanilla bonds as collateral? Please detail the reasons for your response.

Yes.

Q71 : Do you agree with the proposed approach for reporting perpetual bonds as collateral? Please detail the reasons for your response.

Yes.

Q72 : Do you agree with the proposed approach for reporting main index equities as collateral? Please detail the reasons for your response.

Yes.

Q73 : Do you agree with the proposed approach for reporting variation margining with additional provision of securities by the collateral provider? Please detail the reasons for your response.

Yes, we agree with the approach.

However, we assume that the example in table 97 includes an error as the quantity/nominal of collateral and the collateral price changed but the Market value of the collateral did not change.

To our understanding, the market value of collateral should be 10.199.990.000,00 instead of the reported 102.000.000.

Q74 : Do you agree with the proposed approach for reporting variation margining with return of the same securities to collateral provider? Please detail the reasons for your response.

Yes, we agree with the approach.

However, we assume that the example in table 98 includes an error as the quantity/nominal of collateral and the collateral price changed but the Market value of the collateral did not change.

To our understanding, the market value of collateral should be 10.199.990.000,00 instead of the reported 102.000.000

Q75 : Do you agree with the proposed approach for reporting variation margining with return of different securities to the collateral provider? Please detail the reasons for your response.

No.

The example shows that the change of quantity is reported instead of the final quantity which is still posted against the loan. I.e. the reduction of the French bond should not be reported as -2000000 in collateral quantity (i.e. not the delta), as this does not reflect the market practice. The remaining quantity of that ISIN posted as collateral needs to be reported, as this is the value the collateral calculation is based on.

Q76 : Do you agree with the proposed approach for reporting prepaid collateral? Please detail the reasons for your response.

Yes

Q77 : Do you agree with the proposed approach for reporting portfolio code? Please detail the reasons for your response.

Q78 : Do you agree with the approach to reporting margin data? Please detail the reasons for your response and include a reference to the specific table.

Q79 : Do you have any comments on the scope of the non-cash collateral re-use measure, and are there practical obstacles to the reporting? In the case of margin lending, do you agree with the exclusion of securities that cannot be transferred to the prime broker's account due to rehypothecation limits agreed contractually?

We would invite ESMA to confirm in the guidelines that the re-use report is only to be submitted when securities as stated are re-used.

Asset managers are not allowed to re-use securities received as collateral. The restriction originates from ESMA's Guidelines on ETF's and other UCITS issues.

The collateral is transferred as TTCA, so available for re-use under the definition of title transfer, but none of the securities will ever be re-used as it is forbidden in particular for UCITS (and in certain countries for AIFs as well).

Against this background, we assume as asset manager that there is no need to report the re-use report, as collateral posted in the re-use formula will always be zero.

It is our understanding that market participants which do not re-use collateral received, such as UCITS, shall report zero. We would very much welcome this to be reflected in the guidelines.

Q80 : Do you have any comments on cash collateral reinvestment, and do you agree with the scope?

In order to avoid settlement fails, tri-party agents often offer for all open trades (after a pre-defined cut off time) a collateralization with cash. This ensures collateralisation.

Collateral Providers are charged for such cash collateral "service" provided by the TriParty Agent's. Technically it is an O/N credit of Tri-Party Agent to the collateral provider. Usually the credit is getting closed on the next morning and is not repeated, when sufficient securities collateral is available by EOD.

The Collateral Taker does not receive any interest on the cash collateral, as this is only a short-term coverage for a security collateral.

We would invite ESMA to confirm that this is not to be interpreted as "cash re-investment" and therefore no re-use report must be submitted for that O/N cash credit received by the Lender as collateral contribution of the Borrower.

Q81 : Do you agree with the proposed approach for reporting reuse, reinvestment and funding sources? Please detail the reasons for your response and include a reference to the specific table.

Yes.

Q82 : What other aspects need to be considered with regards to the aforementioned approach with regards to treatment of rejection feedback? Please detail the reasons for your response.

Yes.

Q83 :

Q84 What other aspects need to be considered with regards to the aforementioned approach with regards to treatment of reconciliation feedback? Please detail the reasons for your response.

Yes.

Q85 : What other aspects need to be considered to make the process more efficient? Please elaborate on the reasons for your response?

Q86 : Do you have any comments on the aforementioned practicalities relating to the provision of access to SFT data to authorities? What other aspects need to be considered to make the process more efficient? Please elaborate on the reasons for your response?

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