Final report

Guidelines on reporting under Articles 4 and 12 SFTR
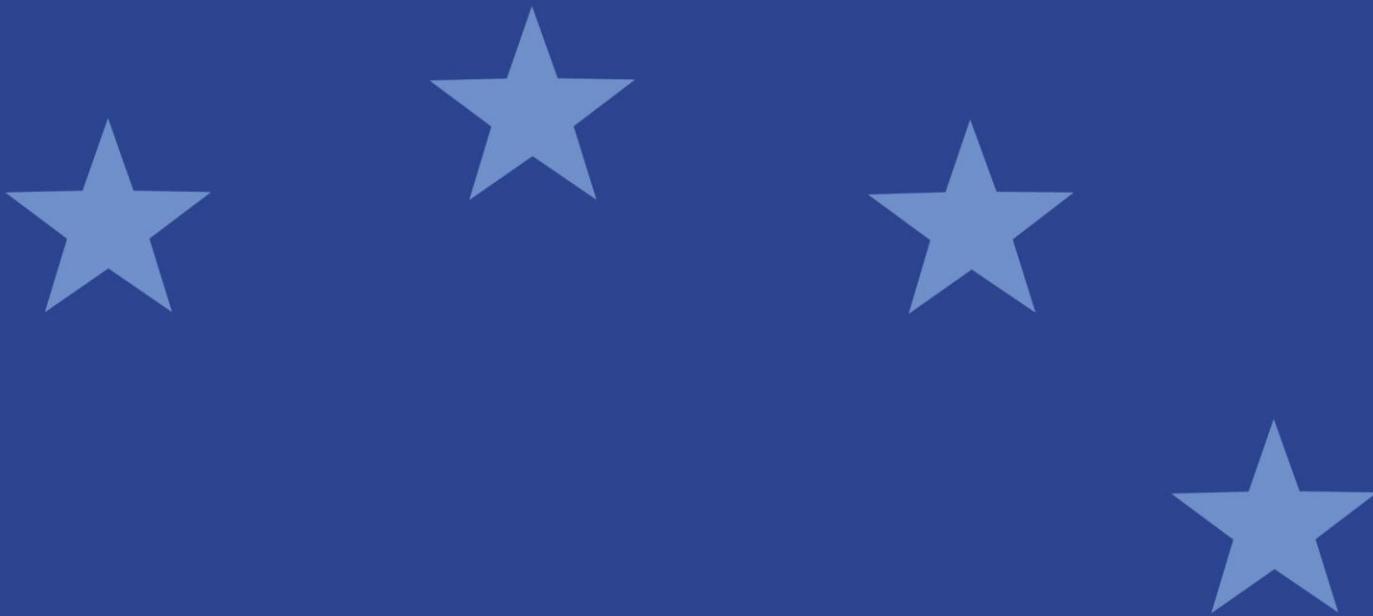
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1 Legislative references, abbreviations and definitions

Legislative references

AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFMs)
Collateral Directive	Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements
ITS on reporting	Commission Implementing Regulation (EU) 2019/363 of 13 December 2018 laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
RTS on reporting	Commission Delegated Regulation (EU) 2019/356 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of securities financing transactions (SFTs) to be reported to trade repositories
RTS on data access	Commission Delegated Regulation (EU) 2019/357 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade repositories
RTS on data verification	Commission Delegated Regulation (EU) 2019/358 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory

technical standards on the collection, verification, aggregation, comparison and publication of data on securities financing transactions (SFTs) by trade repositories

SFTR   Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 – also referred to as the regulation

TS   RTS on reporting (Commission Delegated Regulation (EU) 2019/356) and ITS on reporting (Commission Implementing Regulation (EU) 2019/363)

UCITS   Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

Abbreviations

BSB   Buy-sell back transaction

CFI code   Classification of Financial Instruments code

CM   Clearing Member

CCP   Central Counterparty

CP on TS   Consultation paper on technical standards under SFTR and on certain amendments to technical standards under EMIR

CP   CP on Guidelines on Reporting under SFTR

CSD   Central Securities Depository

CPMI   Committee on Payments and Market Infrastructures

DBV   Delivery By Value

EC   European Commission

ECB   European Central Bank

EEA   European Economic Area

ERR   Entity Responsible for Reporting

ESCB   European System of Central Banks

ESMA	European Securities and Markets Authority
ETF	Exchange-traded fund
EU	European Union
FAQ	Frequently Asked Questions
FRA	Forward Rate Agreement
FSB	Financial Stability Board
GC	General Collateral
GMRA	Global Master Repurchase Agreement
GMSLA	Global Master Securities Lending Agreement
ICMA	International Capital Market Association
iCSD	Central Securities Depository
IFX	Interactive Financial Exchange
IOSCO	International Organisation of Securities Commissions
ISIN	International Securities Identification Number
ISLA	International Securities Lending Association
ISO	International Organization for Standardization
ITS	Implementing Technical Standards
LEI	Legal entity identifier
LTV	Loan-to-Value ratio
MIC	Market identifier code
MMF	Money-market fund
NCA	National Competent Authority
OJ	The Official Journal of the European Union
OTC	Over-the-counter
OTF	Organised Trading Facility

Q&A	Questions and Answers
REIT	Real Estate Investment Trust
Repo	Repurchase transaction
RSE	Report Submitting Entity
RTS	Regulatory Technical Standards
SBB	Sell-buy back transaction
SDLC	System Development Lifecycle
SFT	Securities financing transaction
SLB	Securities lending and borrowing
SMSG	Securities and Markets Stakeholder Group
SWIFT	Society for Worldwide Interbank Financial Telecommunication
T2S	TARGET 2 Securities
TR	Trade repository
TREM	Transaction Reporting Exchange Mechanism
UTI	Unique Transaction Identifier
XBRL	Extensible Business Reporting Language
XML	Extensible Mark-up Language
XSD	XML Schema Definition

2 Executive Summary

Reasons for publication

This Final report on Guidelines on reporting under SFTR contains the assessment of the feedback received from stakeholders on key elements of ESMA Guidelines on reporting under SFTR. The Guidelines provide clarification regarding the compliance with the SFTR technical standards and ensure the consistent implementation of the new SFTR rules.

Contents

The Final report is split into different sections. The sections contain a brief explanation of the proposals in the consultation paper and the assessment of the feedback that is taken on board and the one that is not taken on board together with the reasons for it. Section 3 contains the assessment of the feedback to the general principles that apply to SFT reporting, including how the SFT reports should be constructed, in what circumstances and how many SFT reports should be sent. In particular, this section discusses the feedback relating to the number of SFTs that are reportable, the different action types to be used for reporting, the timeliness of reporting of conclusion, modification and termination of an SFT, certain exclusions from the meaning of SFTs and implications for third country firms concluding SFTs via their EU branches.

Section 4 refers to the feedback on the use cases relating to the population of the tables of fields to be reported under SFTR, explaining how the relevant fields for particular topics should be reported, including how the tables should be populated for the different types of SFTs. The multiple use cases illustrate how different fields should be populated. For each example in theGuidelines there is a corresponding table of relevant fields and the expected XML-text rendering.

Moreover, sections 5 and 6 detail the assessment of the feedback on the clarifications relating to the rejection and reconciliation feedback that counterparties would receive from TRs and how this should be treated. Section 7 includes the assessment of the feedback received regarding particular aspects related to authorities' access to data. Finally, section 8 contains the cost-benefit analysis of the proposals that are included in the Guidelines.

Next Steps

ESMA will publish the final report and the Guidelines on the ESMA's website.

3 General Principles

3.1 Determining the number of reportable SFTs

3.1.1 Market transactions that do not fall under the definition of an SFT

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.

1. Article 3(11) SFTR provides the definition of SFTs. Furthermore, Article 3(10) defines margin lending transactions as "a transaction in which a counterparty extends credit in connection with the purchase, sale, carrying or trading of securities, but not including other loans that are secured by collateral in the form of securities". This unequivocally indicates the intention of the co-legislators to limit the applicability of SFTR to only certain types of market transactions that might share characteristics with margin loans.

2. Recital (7) of SFTR states that "This Regulation responds to the need to enhance the transparency of securities financing markets and thus of the financial system. In order to ensure equivalent conditions of competition and international convergence, this Regulation follows the FSB Policy Framework. It creates a Union framework under which details of SFTs can be efficiently reported to TRs and information on SFTs and total return swaps is disclosed to investors in collective investment undertakings."

3. Recital (2) of Commission Delegated Regulation (EU) 2019/356 (RTS on reporting) states that "to ensure the efficiency and usefulness of reported information on SFTs, the specific details of the SFTs to be reported should be adapted to the different types of SFTs identified in Regulation (EU) 2015/2365. With regards to reporting margin lending transactions, the purpose of Regulation (EU) 2015/2365 is to capture transactions that serve the same purpose as repurchase transactions, buy-sell back transactions or securities lending transactions and therefore pose similar risks to financial stability by allowing the build-up of leverage, pro-cyclicality and interconnectedness in financial markets or by contributing to liquidity and maturity transformation. While margin lending therefore includes transactions subject to margin agreements between financial institutions and their clients where financial institutions provide prime brokerage services to their clients, it does not include other loans such as loans for corporate restructuring purposes which, despite the possibility of involving securities, do not contribute to the systemic risks addressed by Regulation (EU) 2015/2365."

4. When assessing reporting of transactions, it is worth noting that the inclusion of derivatives features in a market transaction or an SFT should not be confused with the existence of termination optionality for SFTs, such as extendable or evergreen.

5. Finally, it is worth noting that under EMIR, the EC issued an FAQ[1] clarifying that the term "undertaking" is addressed to activities instead of entities. Against this background, the term "undertaking" would include entities, regardless of their legal status, performing

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[1] http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/emir-faqs_en.pdf

economic activities in the market. It is also mentioned that "*As regards the concept of "economic activity", the Court has considered that any activity consisting in offering goods and services on a market is an economic activity, regardless of the entity's legal status and the way in which it is financed. Non-profit entities are also considered "undertakings" if they offer goods and services in the market. Individuals carrying out an economic activity are also considered to be undertakings, provided they offer goods and services in the market.*"

6. Considering the focus of the FSB on prime brokerage margin lending, the definitions of SFTs in Article 3(11), the definition of margin lending transaction in Article 3(10) SFTR, as well as the objectives of SFTR stated in Recital (7) SFTR and in Recital (2) of the Commission Delegated Regulation, ESMA believes that some of the transactions cited by market participants should not fall under the definition of SFT and more generally to shadow banking activities as described by the FSB, as their reporting would not contribute to the objectives of the regulation. Therefore, ESMA expressed in the CP its view that certain market transactions should not fall under the definition of an SFT due to their nature. In particular:

   a. retail client lending (except when it is against an irrevocable trust);

   b. private banking and Lombard loans;

   c. syndicated lending and other corporate lendings[2] for commercial purposes;

   d. overdraft facilities of custodians and CCP daylight lending facilities;

   e. intraday credit/overdraft fails-curing;

   f. T2S auto-collateralisation;

   g. intermediate give-ups and take-ups;

   h. transactions involving emission allowances.

7. In addition, ESMA enquired as to whether there were additional market transactions for which clarification was needed around whether they fell under the definition of an SFT.

8. Moreover, following the feedback reviewed, ESMA has better clarified the scope of some of the already proposed transactions, such as retail client lending, T2S auto-collateralisation, including auto-collateralisation in CREST and intraday credit/overdraft fails-curing, including Euroclear Reverse Repo Credit Arrangement.

9. Furthermore, it is important to clarify that pledge is one of the collateral arrangements foreseen in the Financial Collateral Directive, hence SFTs should be reported where pledge is used.

10. The feedback received was generally supportive of the need for clarification on some additional types of transactions. In particular, ESMA has updated the Guidelines by including guidance on how to report SFTs involving commodities for operational and non-financial purposes.

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[2] The types of corporate actions that involve a corporate loan are, among others, the following ones: (i) Mergers, acquisitions and takeovers; (ii) Joint Ventures; (iii) Spin-offs and carve-outs; (iv) Divestiture; (v) Reduction of capital, and (vi) Share buy-backs

11. The assessment of market transactions that should not fall under the definition of an SFT was done on a case-by-case basis. The cases that are included in that section have been analysed in detail and their characteristics confirm they are transactions that are not SFTs as defined under SFTR.

12. ESMA received feedback from the market that some SFTs involving commodities should be out of scope if the SFTs are for operational and/or industrial purpose. ESMA has taken into consideration that SFTs for operational and/or industrial purpose do not have a financing purpose. As such, they do not contribute to the systemic risk addressed by SFTR. Therefore, these transactions should be out of scope of SFTR reporting.

13. It is worth noting that ESMA is neither clarifying further nor addressing the feedback received regarding the reporting of swaps and other derivative products under Article 4 SFTR, as the regulation refers to the transaction reporting of SFTs and of reuse.

14. Furthermore, ESMA studied some of the transactions which respondents proposed were out of scope and does not agree with all the feedback. Specifically, ESMA did not agree with feedback relating to the following transactions, and has explained below that these transactions must be reported under SFTR:

    a. On request borrows, that are SLB transactions that are part of prime brokerage margin lending agreements but are executed separately. They are in scope and should be reported as SLB.

    b. Lombard loans to undertakings, as described in the Guidelines, are in scope and should be reported as margin lending transactions.

    c. Forward sales in commodities that are transactions between two counterparties in which commodities are i) purchased by the buyer from the seller on the spot leg and ii) sold to the seller by the buyer on a specified date against a specified price on the forward leg. These are in scope and should be reported as the type of SFT that is being concluded.

    d. Retail SFTs (i.e. those involving counterparties which are not undertakings) which are not governed under the consumer or mortgage directives, are in scope and should be reported as the relevant type of SFT.

    e. Intraday renewable uncollateralised SLB which are in scope and should be reported as SLB. The specific aspects of reporting of (i) valuation for intraday SFTs and (ii) of uncollateralised SLB are discussed in Section 4.2.5 of the Guidelines.

    f. Finally, warrants, if considered as guaranteed rights relating to title to securities, are in the scope of SFTR not as transactions to be reported, but as collateral or a loan of an SFT.

15. In the following subsections ESMA is providing a more detailed description of the types of market transactions that do not fall under the definition of SFT and thus should not be reported under SFTR.

3.1.1.1 Retail client lending governed by consumer credit legislation

16. One of the usual retail banking services is to extend collateralised loans to clients for the purchase of securities. Normally the collateral used for this loan is either a pre-existing portfolio of securities and other assets, or securities purchased by the client. The legal personality of the client could vary from individuals to other figures existing in common law, such as trusts.

17. In a retail or private client context, there are multiple ways in which the client could make use of the proceeds of a collateralised loan, in addition to simply purchasing securities, e.g. to meet their private consumption expenditure needs or for investments outside the bank.

18. SFTs are normally concluded under a master agreement, which sets the rights and obligations of the parties. ESMA understands that retail banking transactions are subject to consumer credit legislation (such as the Consumer Credit Directive or the Mortgage Credit Directive), rather than concluded under a specific master agreement. While undocumented SFTs exist (such as undocumented BSB/SBB), the structuring of such transactions does not leave any doubt as to their nature.

19. Therefore, stemming from the above considerations, ESMA is of the view that retail client lending transactions governed by consumer credit regulation do not fall under the definition of an SFT.

20. When it comes to trusts and other similar structures, the process is somehow different. Depending on the legal construct, the trustors, also known as settlors, could be personally liable for some of the debts incurred by the trustees on behalf of the trust. Such cases result in a similar situation to the one considered in the previous paragraphs, i.e. retail client lending rather than SFTs. However, when the transaction is concluded by a trust that is autonomous and bears no links with the settlors and sets no liabilities for them, the trust behaves as a legal undertaking and the transaction is not governed by consumer credit legislation. ESMA is of the view that such transactions do fall under the definition of an SFT and should therefore be reported.

3.1.1.2 Private banking loans and Lombard loans not related to securities financing

21. The nature of these transactions is similar to retail client lending. However, they are normally concluded with high net-worth individuals or legal structures built to optimise their investments. The proceeds of the loans are typically used for payments unrelated to the initial investments, including consumption purposes. The duration of these loans is reportedly also much longer than typical SFTs.

22. The collateral used for private banking loans can be of very diverse nature and is not limited to financial assets but may also include physical assets other than commodities (i.e. consumer goods). This would pose a significant difficulty in the reporting of these transactions, should they be considered within scope.

23. Lombard lending not related to securities financing by private banks is a form of retail client lending also usually subject to consumer credit legislation (such as the Consumer Credit Directive or the Mortgage Credit Directive). Moreover, for Lombard loans it is impossible

for banks to identify whether the credit is used fully, partially or at all in connection with the purchase, selling, or carrying of securities (per the SFTR definition of margin lending), hence ESMA is of the view that the Lombard loans do not fall under the definition a margin lending transaction and therefore under the definition of an SFT.

3.1.1.3 Syndicated lending and other corporate lending for commercial purposes

24. The SFTR margin lending definition may cover syndicated lending transactions, i.e. "loans made to companies in connection with transactions where all or part of the proceeds of the loan are used to acquire shares in companies or refinance previous loans made for those purposes."

25. These loans may involve financing of shares in unlisted companies in the context of privately negotiated transactions (infrastructure transactions, financing for the purchase of a group of subsidiaries, intra-group reorganisation activities). They may also involve financing of shares in listed companies in the context of public transactions (mergers and acquisitions).

26. The transaction can involve a single lender, but larger transactions will be syndicated so that different entities (banks, funds, other institutional investors) can participate as lenders. According to industry estimates, the overall size of the European syndicated loan market is in excess of EUR 1 trillion.

27. The loans described above may be captured under the definition of margin lending to the extent that the loan is used to buy (and sell) securities which may or may not subsequently be posted as collateral. Many types of corporate actions that involve a corporate loan may potentially fall under the definition of an SFT, such as:

    a. Mergers, acquisitions and takeovers

    b. Joint Ventures

    c. Spin-offs and carve-outs

    d. Divestiture

    e. Reduction of capital

    f. Share buy-backs

28. Syndicated loans have a commercial purpose. Securities are purchased or sold as part of the transaction in order to gain or reduce ownership of a business. For example, in mergers and acquisitions, the potential profit stems from the difference in the share price reflecting business decisions and announcements made directly in relation to the syndicated loan, between the purchase and the sale of securities.

29. In contrast, SFTs do not have a (non-financial) commercial purpose. Market participants use repos for liquidity and collateral management, and to cover short positions. Securities lending can also be used to earn additional returns from the ownership of a security, or to arbitrage between dividend tax regimes. Margin lending is used to finance the purchase of securities for trading purposes.

30. Unlike the type of corporate loans described above, the objective of these transactions is not to directly influence the commercial decision-making of the issuer of the security. For example, in a securities lending transaction under GMSLA, the borrower shall not enter a securities lending transaction "for the primary purpose of obtaining or exercising voting rights in respect of the Loaned Securities".[3]

31. Recital (2) of Commission Delegated Regulation (EU) 2019/356 specifically excludes "loans for corporate restructuring purposes which, despite the possibility of involving securities, do not contribute to the systemic risks addressed" by SFTR. In line with this, ESMA is of the view that the loans listed above do not fall under the definition of margin lending transaction, thus are not SFTs and therefore should not be reported under SFTR.

3.1.1.4 Overdraft facilities of custodians and CCP daylight lending facilities

32. Entities that hold a basket of securities as custodian frequently offer overdrafts or daylight lending facilities.

33. CCPs receive large amounts of non-cash collateral (as margin) from their clearing members. Pursuant to Article 44(1) of RTS 153/2013[4], these assets may be placed into custody accounts, either at CSDs, central banks or authorised credit institutions. Separately, CCPs also receive large amounts of cash collateral (as margin) from clearing members. Under Article 45(2) of RTS 153/2013 CCPs are required to ensure that "not less than 95 % of such cash, calculated over an average period of one calendar month, shall be deposited through arrangements that ensure the collateralisation of the cash with highly liquid financial instruments". As a result, and to comply with this requirement, cash assets are invested by CCPs in reverse repo transactions (which fall under the definition of an SFT).

34. However, additional complexity arises when repos are established and settled by delivery of bonds against cash on a "delivery versus payment" (DVP) basis. In any delivery, there is the risk of a short gap between payment and delivery due to the way in which settlement systems work. Moreover, many banks prefer to settle with their clients (such as CCPs) on a regular net basis rather than immediately deducting every single cash payment as DVPs arise. The banks managing such CCPs' repo programme may also hold CCP assets in custody. This means that, technically speaking, any such short gaps in funding will be covered (from the bank's perspective) by the lien it holds as a custodian.[5] This is a particular issue for CCPs, which are reportedly heavy users of both custody and repos, under separate operational flows, but where the existence of custody assets and custodian liens may give rise to questions as to whether a margin loan or securities borrowing is taking place when relevant repos settle.

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[3] See GMSLA 2010, paragraph 14.
[4] Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties.
[5] In practice, when a client of a custodian requests the custodian to purchase some securities, the custodian normally buys them directly in the market and delivers them in the client's account. The purchase is *de facto* financed by the custodians, as for efficiency they do not draw immediately from the client's cash account. The custodian then nets out all transactions at the end of the day and draws the resulting amount from the cash account. Such types of loans appear to be normal business practice in custodial relationships.

35. In addition to these custodial relationships, daylight lending facilities are commonplace in CCPs, covering uneven incoming cash flow from sales of the previous day's repo transactions. The securities accounts serve to cover the minimal risk daylight lending facility.

36. Both types of situations result in a credit line extended by the custodian to CCPs or other financial counterparties. ESMA is of the opinion that custody relationships and CCP "daylight lending" facilities do not fall under the definition of SFT.

3.1.1.5   Fails-curing intraday credit/overdraft

37. Fails-curing refers to the securities lending and borrowing arrangements of CSDs amongst their participants, aimed specifically at reducing settlement fails. A similar mechanism exists on the cash side, as intraday credit/overdraft to CSD participants.

38. The remedy of curing of settlement fails is sometimes part of the services which an entity has access to as part of its participation in a CSD. Securities are automatically borrowed upon detection of a securities shortage in the borrower's account in relation to a delivery obligation if the system finds the right securities in the account of an entity that has agreed to participate as the lender in such a fails-curing programme. Credit or securities provided to avoid settlement fails are collateralised with the securities account of the borrowing CSD participant.

39. ESMA confirms that such securities lending and borrowing arrangements fall under the definition of an SFT and as such are subject to SFTR reporting obligations.

40. In addition to the two cases above, where a transfer of security for fails-curing purposes is covered with collateral securities (either transferred or not), some CSDs offer additional fails-curing services that do not involve the transfer of securities. In these "overdraft fails-curing" mechanisms, the credit provider is either the CSD itself or one of the CSD participants. Such mechanisms are already subject to regulatory reporting on credit risk: the CSDR includes provisions that require CSDs providing banking services such as intra-day credit to report on a monthly basis to their competent authorities the CSDs' intraday exposure stemming from these services (see RTS 390/2017[6], Art 39).

41. Against this backdrop, taking into account the above assessment of the daylight and overdraft facilities, the intraday credit/overdraft resulting from fails-curing transactions, do not fall under the definition of SFT and therefore should not be reported under SFTR.

42. The involvement of the CSD in an SFT is not always a synonym of fails-curing transaction. There might be instances in which CSDs enter into a securities lending arrangement on its own account, which obviously falls under the definition of an SFT. In that case, both the CSD and its counterparty would need to report the securities lending transaction, in accordance with the SFTR reporting obligation.

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[6] Commission Delegated Regulation (EU) 2017/390 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on certain prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services.

3.1.1.6   Central bank auto-collateralisation

43. The set-up of T2S auto-collateralisation resembles the intraday credit/overdraft fails-curing transaction described above. One essential difference with fails-curing is that the risk management rules under T2S auto-collateralisation are established, implemented and enforced by the ESCB, rather than by a private CSD. It is the T2S system that monitors whether the borrowers have enough headroom in comparison with the relevant limits that are established for them. Another essential difference with fails curing is that auto-collateralisation does not involve the lending of securities, but only cash. In that sense, it is closer to an overdraft.

44. In T2S, the auto-collateralisation functionality applies to two types of credit:

   g. credit from a central bank to a payment bank, also called central bank auto-collateralisation, as the central bank is the credit provider and the payment bank the credit consumer;

   h. credit from a payment bank to one of its clients (CSD participant), also called client auto-collateralisation, in which case the payment bank is the credit provider and its client the credit consumer.

45. The aforementioned transactions fall under the definition of SFT, however pursuant to Article 2(3) SFTR, the ones where a member of the ESCB is a counterparty are exempted from the obligation under Article 4 SFTR. However, there is no such exemption for the payment banks or their clients.

46. The auto-collateralisation in CREST is organised in a similar manner.

47. Hence ESMA is of the view that in the case of central bank auto-collateralisation, the transactions with a member of ESCB are exempted from the application of Article 4 and therefore should not be reported under SFTR. Client auto-collateralisation, however, is in scope, and these SFTs should be reported.

3.1.1.7   Give-ups and take-ups in the execution and clearing chain

48. In many instances, there are transitory situations where there are give-ups and take-ups between different entities in the execution and clearing chain. In this respect and having regard to Article 2(2) of RTS on reporting, only the status after the final take-up has to be reported. Hence ESMA is of the view that all the intermediate transactions should not fall under the definition of an SFT and therefore should not be reported under SFTR.

3.1.1.8   Commodities transactions entered into for operational and/or industrial purposes

49. Commodities transactions entered into for operational and/or industrial purposes which are clearly not for financing purposes, i.e. are concluded for commercial purposes, do not contribute to the systemic risk addressed by SFTR. Therefore, these market transactions should not fall under the definition of an SFT and therefore should not be reported under SFTR.

    3.1.1.9   Transactions involving emission allowances

50. It is worth mentioning that emission allowances are not considered a commodity, but a financial instrument under MIFID II. Moreover, none of the SFTs definitions refers to emission allowances. Therefore, ESMA is of the view that transactions involving the use of emission allowances should not fall under the definition of SFT and therefore should not be reported under SFTR.

3.1.2 Aspects related to all types of SFTs

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.

51. ESMA proposed in the CP the main principles regarding (i) the counterparties to an SFTs, (ii) when an SFT exists and what is the maximum number of counterparties to an SFT, (iii) how sub-funds should be identified, (iv) the reporting of the legs of cleared SFTs, and (v) the SFTs concluded by branches. An additional reference was made in relation to SFTR and the reporting under MiFIR.

52. The feedback received was generally supportive of the need for more clarification to ensure correct reporting of SFTs.

53. ESMA has thus amended the Guidelines to address the feedback relating to the following areas:

    a. the use of LEI for pools of assets;

    b. the reporting by funds, sub-funds and contractually established structures;

    c. the reference to intermediary in the case of agents and arrangers;

    d. fails-curing and scenarios where it is not possible to allocate SFTs to a settlement agent's clients when omnibus accounts exist;

    e. reporting of same-day-cleared SFTs that are not concluded on a trading venue.

54. ESMA has not taken into account the feedback relating to reporting of multi-managed funds and inclusion of entity responsible for reporting in the reconciliation. This is because the different SFTs reported by the different asset managers will have different UTIs, hence it is not needed to include any additional field in the reconciliation process.

    3.1.2.1   Aspects related to repos

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

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.

55. ESMA clarified in the CP certain aspects related to the reporting of repos and, more specifically, (i) the number of repos and (ii) the reporting of reverse repos concluded by CCPs.

56. The feedback received was generally supportive of the need for clarification on some additional aspects in order to ensure correct reporting of repos.

57. In addition, ESMA asked market participants whether additional clarification was needed for certain types of repos or reverse repos. The feedback indicated that there were some aspects where further clarification would be beneficial in relation to (i) pledged repos, (ii) Gentan repos and (iii) repos with individuals.

58. ESMA has thus amended the guidelines on repos to address the feedback relating to the following instances:

    a. Clarify the reporting of repos where the repurchase price is in a different currency than that of the purchase price.

    b. Clarify how to separate the amounts of repos in different currencies.

    c. Clarify that the reporting start date is determined from the counterparty perspective, not the type of SFT perspective.

    d. Clarify that repo and SLB templates are suitable for collateralised loan with commodity underlying.

    e. Clarify that as part of the collateral arrangements, there could be also pledge, hence SFTs where pledge is used should be reported. Currently only SLB and ML definitions allow for pledge.

    f. Clarify that Gentan repos should be reported as the type of SFT that most closely reflects their characteristics.

    g. Clarify that there can be repos with individuals, as they are counterparties.

59. Finally, there is no specific reporting start date per type of SFT, instead the reporting start is defined in Article 33(2)(a)(i)-(iv) SFTR.

3.1.2.2 Aspects related to BSB/SBB

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.

60. ESMA proposed in the CP that where the BSB/SBB is governed by a bilateral or master agreement or an annex to a master agreement, this agreement should be reported in the relevant fields, namely Fields 9-11 of Table 2 on Loan and collateral data.

61. The feedback received was generally supportive of this and additionally indicated the need for clarification on some additional aspects in order to ensure correct reporting of BSB/SBB.

62. In addition, ESMA asked market participants whether additional clarification was needed for certain types of BSB/SBBs.

63. Following the feedback received, ESMA has thus amended the guidelines on BSB/SBBs to address the feedback relating to the following instances:

    a. Clarification on how to report agreements not included in the ITS.

    b. Clarification that an amendment to the validation rules on reporting of BSB/SBBs is allowed to the extent permitted by the RTS on reporting and the fields that are required for BSB/SBBs. Otherwise, the counterparties should use the template that better fits the type of SFT that has been concluded.

    c. Clarification as to how the prices of the BSB/SBBs are reported as the draft RTS on reporting did not allow a repo rate to be reported for BSBs in either Table 2, Field 23, "Fixed Rate", or Table 2, Field 25, "Floating Rate". Nor did it allow reporting of the traditional price of a BSB, which is the forward break-even yield or forward price of the collateral. Clarify the reporting of start and end prices for BSB/SBB. The final RTS on reporting has tried to address the lack of a price field for BSBs by making Table 2, Field 49, "Security or Commodity Price", a mandatory field for BSB. Unfortunately, the field is defined as "the price of the security or commodity used to calculate the trade amount for the spot leg of the buy-sell back", which is not a market convention for quoting BSBs. In the context of a BSB, Field 2.49 would seem to merely duplicate the information initially provided in Field 2.87 (Price Per Unit), even if the former then remains fixed over the lifetime of the BSB while Field 2.87 will be updated through collateral updates.

    d. Clarification that the field Master agreement version should be reported with the value applicable to the SFT that is being concluded.

64. ESMA has not included in this section:

    a. Clarification on what fields should be populated to reflect a benchmark-based repurchase price, as the principal amount on the maturity date (Field 2.38) should be reported as it is at the beginning of the SFT and updated, if need be, in order to reflect the amount that is settled on the maturity date;

    b. Clarification on the exclusion of (i) Commodity transactions entered into for reasons other than financing, such as for transportation and capacity needs and for operational purposes; (ii) Transactions entered into for gas storage purposes based on market practice/industry standards and including a sell/buy-back or BSB obligation; and (iii) Transactions whereby the quantity/ characteristics of the commodity to be repurchased are materially different compared to the quantity/ characteristics of the commodity sold, as all these transactions are not in scope of SFTR reporting; and

    c. Further guidance on the distinction between the two types of transaction, namely repo and BSB/SBBs where both may be governed by a master agreement and where both may involve outright title transfer, as it is up to the counterparties to agree what type of SFT they conclude and report its details accordingly.

3.1.2.3   Aspects related to securities lending and borrowing

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.

65.   ESMA requested feedback in the CP around whether there are any issues foreseen relating to the non-availability of information on the counterparties and the securities by T+1.

66.   About half of the respondents did not foresee any issues with the non-availability of information. The issues that were raised were around the availability of data due to time zone differences, dependency on the counterparty and around data from third-country CSDs. There were two requests for clarification. Firstly, around CCP-based intraday lending and position reporting. Secondly, clarification about the possibility to report the agent lender as the counterparty and the fund manager as the beneficiary.

67.   Taking into consideration the received feedback, ESMA understands that non-availability of information is predominantly an operational challenge, and ESMA has not identified any compelling reason for leniency on the reporting requirement by T+1, which is specified in the Article 4(1) of SFTR.

68.   In most cases, SLBs are settled in accordance with the settlement cycle in the EU, i.e. T+2. A similar length of the settlement cycle is in place in most G-20 jurisdictions. However, there might be instances in the process of optimization of SFTs in which some SLBs are cancelled and replaced, leading to a reduction in the number of SFTs. The reporting of these cases is clarified in the Guidelines.

69.   ESMA is aware that there are instances where the counterparties conclude SLB that are not security-driven, but cash-driven. Cash-driven SLBs are similar to repos, in that one or several securities are used to collateralise a cash loan in one currency. In this case while the economic setup is comparable to a repo, the practical arrangements used correspond to an SLB. The fields pertaining to standard SLB are not granular enough for cash-driven securities loans, as they do not allow e.g. for the population of Fields 2.37, 2.38 and 2.39 (on principal amount and currency). Moreover, the reporting of cash-driven transactions (i.e. for financing purposes) using templates that were designed for security-driven ones (i.e. for collateral sourcing) likely implies misinterpretation of the purpose of such transactions by future data users, especially when looking at the data on an aggregate basis. It will also increase the number of SFTs reported, as for a single cash pool on the collateral side there will be multiple securities loans. The reporting of these cases is clarified in the Guidelines.

70.   Finally, ESMA has considered the below feedback, however, does not see any reason to amend/expand the Guidelines accordingly:

   a.   Various respondents raised issues with the availability of data. Firstly, time zone differences mean that reporting processes may be misaligned for timely reporting. Secondly, dependency on the counterparty is a concern. Thirdly third country CSDs may not share the required data. ESMA is of the opinion that these are all operational challenges which counterparties should overcome to ensure compliant reporting.

b. One respondent requested clarification on reporting the agent lender as the counterparty and the fund manager as the beneficiary. ESMA confirms that the agent lender is not a counterparty in the transaction and should not be reported as such. The correct use of the Beneficiary field is covered by Section 4.17 of the Guidelines.

c. One respondent asked given how securities borrowing and lending in a CCP setup with asset pooling works if the intraday lifecycle activity (including intraday loans) can be exempted from trade reporting. And secondly if for the same reasons all trade reporting can be in terms of delta change per (sub-)fund between subsequent EoDs. And thirdly if position reporting can be based on actual settlement (i.e. on S+1). ESMA regards the CCP's asset pool structure as very similar to the workings of agency lending asset pooling arrangements. Therefore, ESMA does not agree to an exemption for CCP setups from the requirement to report intraday lifecycle activity. Furthermore, ESMA is of the opinion that the operational issues raised with regard to intraday transactions in a CCP setup do not absolve the CCP from the reporting requirement of intraday lifecycle activity.

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.

71. In the CP ESMA requested feedback as to whether there is any price-forming information in SFTs which are cancelled and replaced.

72. All respondents agreed there is no price-forming information in SFTs that are cancelled and replaced. One respondent requested clarification on the consequences of Article 3 paragraph 7, 8 and 9 of the Regulation.

73. Taking into consideration the received feedback, ESMA understands that an SFT that is cancelled and replaced does not bear price-forming information. ESMA is of the opinion that the request for clarification on the consequences of Article 3 paragraph 7, 8 and 9 of the Regulation is sufficiently covered by the Guidelines.

74. ESMA will address the request for further clarification made by one respondent in relation to Articles 3(7), (8) and (9) of SFTR which cover the definitions of securities or commodities lending, buy-sell back transaction, sell-buy back transaction and repurchase transaction. The final Guidelines will refer to several aspects related to the scope of these definitions. ESMA did not receive specific and detailed feedback on this topic.

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

75. In the CP ESMA proposed three alternative proposals for reporting cash-driven SLBs, since the fields pertaining to standard SLB are not granular enough for cash-driven securities loans.

76. Under Proposal A, reporting should be as a repo. Under Proposal B, reporting should be as an SLB. Under Proposal C, reporting should be as a margin loan.

77. The vast majority of the respondents supported the Proposal A (repo) stating that this option most closely resembles the characteristics of a cash-driven SLB, timing of collateral is similar to repos, and term information would be accurate as aligned to the cash amount. There was a significant objection to Proposal B and C (respectively SLB and margin loan) with the most important limitation being that these cannot facilitate all cases. One respondent suggested a fourth proposal: to report the trade as a cash loan vs. securities pool. It was noted that if reporting as a repo, the transaction is still governed by a GMSLA or the CCP clearing conditions. Disagreement was expressed with the notion that cash-driven SLB is predominantly a CCP driven trade.

78. Taking into consideration the received feedback, ESMA understands that the cash-driven SLB should be reported using the repo format. The repo format covers all fields that are part of the characteristics of a cash-driven SLB.

79. Moreover, ESMA is including the following additional clarifications to the Guidelines.

    a. Various respondents noted that if cash-driven SLBs are reported as a repo, the underlying master agreement should be reported as a GMSLA or the CCP clearing conditions as appropriate.

    b. Several respondents commented that cash-driven SLB is not primarily a CCP driven transaction. In recognition of the validity of this comment, ESMA will remove reference to this characterisation.

80. Finally, ESMA is not taking into account the proposal made by one respondent to report cash-driven SLB as a cash loan against a non-cash securities pool, because there is broad consensus that reporting as a repo is appropriate.

3.1.2.4 Aspects related to SFTs involving commodities

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.

81. ESMA asked for feedback on the approach to reporting SFTs involving commodities.

82. ESMA received five responses. Only one respondent was in full support of the proposal. The other four respondents requested various clarifications, mostly around the scope of SFTs involving commodities. One respondent argued that crypto currencies are a commodity in scope of SFTs involving commodities, however, ESMA notes that, at this stage, there is no legal definition to support such claim. The respondent also pointed out the overlap with REMIT and the confusion it causes. And finally argued that the market is not ready and the possibilities of using commodities is too complex and broad. Another respondent argued that it is not possible to identify the SFT type on the basis of agreement used. For commodities lending, this is insufficient and ambiguous. The market participants cannot agree on the legal characterisations of commodities SFTs.

83. Two related respondents requested clarification on two topics. The first topic is about the characterisation of a structured SFT using various derivatives hedging techniques. The

second one is related to the difference between "equivalent commodities" and "substituted commodities".

84. ESMA confirms that an SFT requires a linkage between the opening and the closing leg of the transaction. This is typically achieved when (i) the collateral taker sells a commodity to the collateral provider with the obligation, commitment or agreement (but not with an option) to buy back or repurchase such commodity, and where (ii) the execution of the opening leg and the closing leg are linked by simultaneous execution or by making the execution timing and price of the two legs contingent upon each other. Such transactions are in scope of Article 3(8) of SFTR.

85. As indicated previously, the counterparties need to identify the type of SFT that they are concluding on the basis of the agreement used for the transaction. In most cases this is defined by the existence of/lack of a master agreement.

86. ESMA notes that commodities financing is largely a bilateral market and does not incorporate the use of intermediaries in the same way as some other securities financing transactions, as expressed in the required reporting fields.

87. Taking into consideration the received feedback, ESMA acknowledges that further guidance about the scope of SFTs involving commodities is needed and has given further clarification.

88. Following the feedback, ESMA included the following additional clarifications to the Guidelines:

   a. The scope of SFTs involving commodities is clarified with the addition of linkage between opening and closing leg. The SFT's execution is structured in such a way that the collateral taker neither loses its economic ownership of the commodities nor takes on new market risk in the commodity. This is typically achieved by executing the opening and closing leg simultaneously and/or making the execution of the legs' timing and pricing contingent upon each other.

   b. The characterisation of SFTs involving commodities is clarified for repo/reverse repo, BSB/SBB and SLB transactions. BSB/SBB transaction involving commodities can be documented or undocumented. In all instances it concerns a sale (purchase) and a repurchase (sell back) of a commodity. No pledge structure exists under a BSB. The underlying agreement might make the characterisation more obvious than when it is undocumented.

   c. SFTs involving commodities can be part of a larger structure involving derivatives, such as future and option hedging techniques. Only the part that relates to the SFT is reportable under SFTR. The parts involving derivatives are not reportable under SFTR but are be reportable under EMIR.

   d. A clarification on the application of equivalent commodities and substituted commodities. ESMA understands that the term "equivalent commodities" originates from the securities finance world. Equivalent securities are securities with the same ISIN, but not necessarily the exact same securities. All securities with the same ISIN are generic and economically identical and therefore it is market practice to accept the return of "equivalent securities" in SFTs. ESMA understands that the term

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"substituted commodities" originates from the securities finance world. Substituted securities are often used in triparty repo, where it is common for the cash taker to have a "right of substitution" of the repo collateral with similar collateral (of the same credit quality by the same issuer).

89. Against this backdrop, the Guidelines have been redrafted accordingly.

90. ESMA is not addressing the treatment of SFTs under REMIT and SFTR in this section, as this is covered in the section on 'SFTs involving energy'.

91. The future scope of SFTs involving crypto assets is to be decided by the European Commission. ESMA has provided its advice on the initial coin offerings and crypto assets on 9 January 2019[7]. At present crypto assets are not classified as a commodity. ESMA will monitor the developments with regards to crypto assets.

3.1.2.5 SFTs involving energy

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

92. There is a potential overlap between SFTR and REMIT. REMIT covers the reporting of transactions involving energy where the energy is delivered in the EU. The scope of SFTR does not limit the place where the commodity lent or borrowed or provided as collateral is delivered, but the reporting templates neither include information on it. It is conceivable that a transaction is a REMIT reportable transaction with T+30 reporting timeframe, but also could be an SFT reportable by T+1. ESMA asked in the CP if there are any aspects with regard to SFTs involving energy that need to be clarified.

93. There were two respondents with a background in energy trading. One respondent requested a carve-out for transactions subject to REMIT from reporting requirements under SFTR. Or alternatively suggesting a simplified SFTR reporting in the event that a transaction is reportable under REMIT. In support of a carve-out, it was pointed out that not all data is known on T+1. Another respondent with a background in blockchain trading was also in support of a carve-out. The other energy trading respondent pointed out that the market for repos and buy-sell backs are collateralised with bonds or cash only.

94. Taking into consideration the received feedback, ESMA once more acknowledges the possible overlap of reporting obligation under REMIT and SFTR. Furthermore, ESMA does not agree that there is an exclusion of commodities from repo and buy-sell back definitions.

95. ESMA recognises that overlap between REMIT and SFTR is unavoidable because of the requirements in Level I. With regards to the potential overlap between SFTR and REMIT, it is worth noting that REMIT covers the reporting of transactions involving energy where the energy is delivered in the EU. The scope of SFTR does not limit the place where the commodity lent or borrowed or provided as collateral is delivered, and the reporting templates neither include information on it.

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[7] https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf

96. ESMA understands from the feedback that the data reported in the reporting timeframe of SFTR (T+1) may seem imperfect as compared to the T+30 REMIT reporting timeframe. If a transaction within REMIT were also within the scope of SFTR it is likely that such transaction would be reported pursuant to a REMIT "Non-Standard Contract" template and reportable on a T+30 days basis; while the reporting of SFTs is generally on a T+1 basis.

97. The reporting timeframe of SFTR is specified in Article 4(1) of SFTR and ESMA cannot modify this. However, it is worth reminding counterparties that they would be able to correct data.

3.1.2.6   Aspects related to margin lending

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.

98. This SFT type relates to the existence of any margin loan in the base currency or a short market value. ESMA proposed in the CP that at a given point in time, one and only one margin lending transaction exists between each pair of counterparties, except where the entities agree to have more than one base currency and the cash balances are determined in relation to each of them, in which case there should be a margin lending transaction per each base currency. Margin loans are bilateral transactions, hence the identification of a number of reportable transactions does not represent a significant difficulty.

99. Moreover, ESMA proposed that when the margin loan is at zero, i.e. no credit is being extended, then the transaction should not be reported with Action type "ETRM", but rather with action type "MODI".

100. The feedback received was generally supportive of this and indicated the need for clarification on some additional aspects in order to ensure correct reporting of margin loans.

101. Following the feedback received, ESMA has thus amended the guidelines on margin loans to address the feedback relating to the following instances:

   a. Clarification on the non-reporting of assets that differ from cash or securities.

   b. Clarification that the reporting of client's short market value should not be based on the recognition in accounting (that is either trade date or settlement date accounting) by the prime broker (IAS 39.38 Financial Instruments: Recognition and Measurement). The reporting of short market value should be made in the same way in which the settlement of the loan and collateral is reported. Thus, the counterparties should calculate the short market value on the basis of the intended settlement date and securities that are expected to be delivered.

   c. Consequently, because payable/receivable cash flows related to the trading of securities are not to be represented on the balance sheet, they should not be considered part of the "net cash debit" in the margin lending definition. Other future cash flows that are represented on the balance sheet (such as accrued interest and

deposit cash flows) are considered to be part of the "net cash debit" part of the margin lending definition.

d. Clarification on the reporting of the portfolio of the prime brokerage client when it does not involve securities trading.

e. Clarification on when the margin loan outstanding is at zero, the client collateral portfolio held by the prime broker is no longer collateralising a margin loan exposure. The prime broker should (i) report the first previously used ISIN at zero to denote that there is no collateral and (ii) cease to report collateral until such time as a margin loan or SMV exposure again exists.

102. ESMA has not taken into account the request by one respondent that only the securities which are transferred to the own account of the prime broker should be reported as collateral.

3.2 Reporting of CCP-cleared 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.

103. In line with EMIR derivative reporting[8], ESMA established in the RTS the optional and complementary position-level reporting for CCP cleared SFTs. Reports at position level can be submitted when the following conditions are met:

a. The legal arrangement is such that the risk is at position level, the trade reports all relate to products that are fungible with each other and the individual trades have been replaced by the position. This is the case when novation takes place after netting of individual trades, the netted position results in a new contract, and a new UTI is generated for it. This could be the case for example, between a clearing member and a CCP.

b. The original trades, i.e. at transaction level, have been correctly reported. It is not permissible to report only positions.

c. Other events that affect the common fields in the report of the position are separately reported.

d. The original trade reports (point b above) and reports relating to other events (point c above), where applicable, have reached a suitable "end of life state". This should be achieved by sending early termination messages and then reporting the net position either as a new position or as an update to the existing position.

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[8] The conditions are defined in EMIR Q&As (TR Question 17): https://www.esma.europa.eu/sites/default/files/library/2016-1176_qa_xix_emir.pdf

e. The report of the position is made correctly filling in all the applicable fields in the counterparty-specific and transaction data, and, as appropriate, margin and collateral reuse table of fields.

f. If these conditions are fulfilled, then the reporting of subsequent updates, including valuation updates, collateral updates and other modifications and lifecycle events can be applied to the report of the position (as modifications etc., and keeping the same value of the UTI on the CCP cleared position) and not to reports of the original trades/events.

104. Furthermore, in the CP, ESMA mentioned two issues that were brought to its attention and which would make the position-level reporting of repos more complicated than it might initially appear: (i) the fungibility requirement in the case of repos would mean that separate positions would have to be reported for each settlement date, each currency and each ISIN and (ii) at least in one of the major CCPs there is only a technical/settlement/payments netting of fungible obligations, meaning that there is no single contract for each net delivery or payment amount that would qualify for a UTI.

105. The approach proposed in the CP has been broadly supported (or not opposed), however, several respondents asked for additional explanations.

106. In particular, two respondents agreed that position-level reporting is not feasible for repos, however many repo examples in Section 6 of the CP illustrate reporting at position level. ESMA has revised these examples accordingly.

107. One respondent asked how to refer to the ID of a position and whether such ID would change following to the modifications of a position. ESMA has addressed this issue in Section 4.3 of the Guidelines.

108. Two respondents noted that Action Type "Position component" was marked as non-applicable to BSB in the Final report and asked for clarifications on this matter. In this respect, ESMA notes that there was an omission in the Final Report and that this Action type is applicable to BSBs, in line with the RTS. Consequently, the relevant part of the Guidelines does not need to be amended.

109. Two respondents asked if cleared trades should be reported first at transaction level and then at position level. ESMA has included in the Guidelines a more comprehensive example showing the reporting of cleared trades that are included in a position.

110. One respondent asked for clarification regarding a commodity finance solution where the far leg (Forward) of a bilateral commodity repo is immediately submitted for clearing (Future). In particular, the respondent asked whether it should be reported under MiFID or as part of a repo under SFTR. The reportability of the financial transactions under MiFIR is outside of scope of these Guidelines. However, if the original transaction is an SFT, it should be reported under SFTR irrespective of the conclusion of the future. A clarification on this matter is included in Section 4.2.6 related to commodity SFTs.

111. Three respondents asked to evaluate if it is enough to report only cleared trades in case of a prompt clearing of bilateral trades. This proposal, however, conflicts with the RTS which require that the original bilateral transactions which are not executed on venue must be reported even if they are cleared on the same day, therefore it cannot be considered.

112. One respondent asked for more information regarding reporting at position level for non-cleared SFTs. However, the position-level reporting is envisaged only for the cleared SFTs. One respondent noted that a TR will not be able to verify that the original transactions were reported at trade level and, if not, reject the position-level report. ESMA does not expect such validation to be undertaken by the TRs; therefore, the Guidelines do not cover this aspect.

113. The possibility to report at position level is maintained for repos, even though in principle, ESMA does not expect position-level reports for this type of SFT due to the constraints stated in the CP.

3.3 Allocation of responsibility under Article 4(3) SFTR

3.3.1 General case

114. Article 2 establishes the scope of application of SFTR and Article 2(1) defines more specifically the entities subject to the regulation, whereas Articles 2(2) and 2(3) establish certain exemptions to the application of reporting and disclosure requirements.

115. Furthermore, Article 4(1) establishes the general reporting obligation for the conclusion, modification and termination of SFTs.

116. Furthermore, Article 4(3) provides a framework for the allocation of responsibility for reporting by counterparties that are subject to the regulation.

117. Moreover, there are certain instances in which the framework of mandatory delegation might suggest that the SFT has to be reported by entities, e.g. UCITS management company or AIFM or an FC, established in third country.

118. The guidance on population of fields in the case of allocation of responsibility under Article 4(3) SFTR is included in Section 4.4 of the Guidelines.

3.3.2 TC-FC

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.

119. ESMA proposed in the CP an approach regarding the allocation of responsibility with regards to SFTs concluded between TC-FC and EU SME-NFC in case the Commission has not adopted an implementing act on equivalence with regard to a third country. In accordance with Article 2(1)(a)(ii) SFTR, Article 4(3) SFTR applies to third-country (TC) entities only with regards to the SFTs concluded in the course of operations of their branch in the Union.

120. Furthermore, Article 21(2) SFTR provides that "Where the Commission has adopted an implementing act on equivalence with regard to a third country, as referred to in paragraph 1 of this Article, counterparties entering into a transaction subject to this Regulation shall be deemed to have fulfilled the requirements laid down in Article 4 where at least one of

the counterparties is established in that third country and the counterparties have complied with the relevant obligations of that third country in relation to that transaction."

121. The proposal was that, as the allocation of responsibility with regards to compliance with the reporting obligation cannot be allocated to a TC-FC, the SME NFC should either report the SFT directly to a TR or otherwise make use of the possibility for voluntary delegation included in Article 4(2).

122. Respondents highlighted multiple risks related to the approach, notably that SME-NFCs might become reluctant to provide liquidity to non-EU entities and that potential non-compliance or significant workload might increase, in particular in cases where relationships between SME-NFC and TC-FC exist before the entry into force of the reporting obligation.

123. Nevertheless, as no alternative proposal has been made, and while some negative aspects to the existing proposal have been identified, ESMA considers that the proposal is the appropriate solution, to address the issue of SME-NFCs entering into SFT transactions with TC-FC, to comply with Level 1.

124. In addition, ESMA acknowledges that several respondents raised concerns on the allocation of responsibility between the FC and the SME-NFC with regards to the status of SME-NFC in the context of mandatory delegation in general. It is a shared point of view by most respondents that NFC should communicate with FC whether they qualify as small NFC or not.

125. Finally, some respondents highlighted that reporting of collateral reuse data will be very problematic under the mandatory delegation. There would be a need to agree on the information to be shared between the FC and the SME-NFC. This aspect is clarified in Section 5.6 of the Guidelines.

3.3.3 Funds

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.

126. ESMA proposed in the CP an approach regarding the allocation of responsibility with regards to UCITS management company and AIFM, established in a third country.

127. The approach relates only to AIF since for UCITS, the UCITS management company is always established in the EU.

128. Under AIFMD, ESMA identified two situations where a non-EU AIFM would be impacted. Under these conditions, ESMA proposed that AIFMs that are established in a third country but are authorised to provide services under passporting regime, retain the responsibility for reporting. In the cases of the national private placement regime, the AIFM should report if required to by the national rules, or otherwise, the responsibility remains with the fund.

129. Against this backdrop, the Guidelines have been redrafted accordingly.

130. In the case of UCITS, it is worth noting that the UCITS management company is always established in the EU. The UCITS cannot be managed by a TC-AIFM either. This instance does not create any particular difficulty for reporting.

131. Under the AIFMD, there can indeed be an EU AIF which is managed by a non-EU AIFM or a registered EU AIFM to which SFTR is not applicable. There are three possible situations:

    a. National private placement regime (Article 42 AIFMD) (the only currently available regime as no passport has been granted to any 3rd country yet): under this scenario Member States may allow non-EU AIFMs to market to professional investors, in their territory only, units or shares of AIFs they manage subject to a number of conditions. There are no conditions of authorisation, supervision, etc. under this article of the AIFMD, but this may be foreseen in national provisions which may be stricter.

    b. Passporting regime (Articles 37, 39 and 40 AIFMD): non-EU AIFMs intending to manage and/or market AIFs in the EU with a passport need to obtain prior authorisation from their Member State of reference (established as per the provisions of Article 37). However, as mentioned above, this regime isn't currently available to any TC.

    c. Registered EU AIFM (Article 3(3) AIFMD): registered EU AIFMs are not authorised under the AIFMD and are only subject to the provisions of article 3(3) of the AIFMD.

132. Finally, two respondents suggested that the responsibility for the reporting obligation for UCITS or AIF should always remain with the portfolio manager. Therefore, in cases where the activity is outsourced, the responsibility should still rest with the outsourcing manager of the UCITS or the AIF. This proposal has not been retained as it is not in line with Level 1. ESMA has neither taken on board the feedback by some respondents that non-EU AIFs are not required to report irrespective of the location of the AIFM, as AIFs managed by AIFM registered or authorised under AIFMD are subject to reporting under SFTR.

3.3.4 Voluntary delegation of reporting

133. In the CP ESMA reminded that under SFTR counterparties may voluntarily delegate the reporting to a third party, that the responsibility for reporting stays with the counterparty responsible for reporting, and that careful assessment of all risks to reporting should be performed in case of delegation to a non-EU27 report submitting entity.

134. Respondents to the consultation did not raise any specific issues with regards to the voluntary delegation of reporting. However, in some scenarios where the voluntary delegation was considered, several respondents raised concerns regarding missing or unavailable data, or other information deficits.

135. For this reason, ESMA would like to emphasize in the Guidelines that the responsibility of reporting counterparty is to provide all the necessary data elements and ensure their correctness. On the other hand, it is important to point out that the reporting counterparty should be duly informed about the data submitted on its behalf, including all the rejections, reconciliation breaks as well as other data quality issues pertaining to the relevant data.

136. Similarly, to EMIR, it is worth noting that EU counterparties should continue to carefully assess any risks that might be posed to their compliance with the reporting obligations under Article 4 of SFTR in case of delegation of reporting to a non-EU27 report submitting entity.

3.4 Application of SFTR reporting obligations to SFTs concluded by non-EU entities with EU branches

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.

137. ESMA proposed in the CP an approach for determining the conclusion of SFTs by EU branches of non-EU entities.

138. ESMA considered in its proposal that the concept of conclusion normally has a broader meaning than the concept of execution. Therefore, ESMA relied on Article 14 of CDR 2017/590 dealing with the reporting of executions by branches, where it is considered that at least one of the following conditions need to be met:

   a. where the branch received the order from a client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client;

   b. where the branch has supervisory responsibility for the person responsible for the investment decision concerned;

   c. where the branch has supervisory responsibility for the person responsible for the execution of the transaction;

   d. where the transaction was executed on a trading venue or an organised trading platform located outside the Union using the branch's membership of that trading venue or an organised trading platform.

139. Therefore, ESMA considered in its proposed approach that the above conditions are the minimum ones under which an SFT becomes reportable under SFTR, as a result of the fact that an EU branch of non-EU entity concludes it.

140. Most of the respondents did not agree with the proposed approach and raised several potential issues in case this approach was retained. Two main issues have been highlighted below.

141. Firstly, the respondents highlighted that the proposed approach is not in line with the scope of SFTR as:

   a. it would seem to shift the focus to the activity of individuals rather than the risk held in the EU which departs from the aim of SFTR;

   b. it is not consistent with the approach under EMIR with regards to the broader meaning of conclusion;

c. it would create a discrepancy between the way EU entities and EU branches of third-country firms are treated for the purposes of SFTR transaction reporting.

142. Secondly, the respondents raised technical issues about the reporting itself, notably:

a. In the case where an EU counterparty transacts with an EU-branch of a Third Country entity, under the proposed approach by ESMA, it would be a major challenge for the EU counterparty to identify the counterparty it has concluded SFT with;

b. where a TC entity concludes an SFT with an EU entity, and its EU branch is brought into scope for SFTR reporting based on the conditions proposed, but without being a counterparty to the trade, the reporting would either:

i. send the report with no reference to the EU based branch in the counterparty data which would be a correct representation of the trade and its risk, but it would be very difficult for anyone to verify the correctness of the report; or

ii. send the report with reference to the EU based branch counterparty data which would be an incorrect representation of the trade and its associated risk, but the EU counterparty would not report the EU-branch in the dedicated reporting field as this information would not be recorded in its own books.

c. potential reporting breaks;

d. difficulties in the collateral and collateral reuse reporting;

e. uncertainty in the UTI generation mechanism.

143. In order to address the comments of the respondents under paragraph 141 and 142, ESMA recognises that the proposal should be amended. Therefore, ESMA considers that in the context of SFTR, the concept of conclusion should be aligned with the concept of commitment to the books and records.

144. ESMA amended the Guidelines considering that a transaction has been concluded by EU-branches of non-EU entities in the case where the SFTs are committed to the books and records of the EU-branches of non-EU entities.Article 2(1)(a) SFTR specifies that the Regulation applies to any counterparty to an SFT that is established in the EU (including all its branches) and to any non-EU counterparty "if the SFT is concluded in the course of the operations of a branch in the Union of that counterparty". The concept of conclusion may have a broader meaning than the concept of execution. Therefore, the above condition is the minimum one under which an SFT becomes reportable under SFTR, as a result of the fact that it is booked and therefore concluded by an EU branch of a non-EU entity.

3.5 Determination of reportable SFTs when concluded by branches

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.

145. ESMA proposed in the CP guidance for determining whether an SFT conducted by a branch needs to be reported. The guidance refers to a table that is included in the CP. The respondents considered the table to be clear and helpful.

146. Against this backdrop, the Guidelines include the elements provided in the CP.

3.6 Reporting of intragroup transactions

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.

147. An intragroup transaction is a transaction between two undertakings which are included in the same consolidation on a full basis and are subject to appropriate centralised risk evaluation, measurement and control procedures. There are no exemptions in relation to reporting of intragroup SFTs by counterparties subject to the reporting obligation under Article 4 SFTR. Therefore, when an intragroup SFT is concluded, the counterparties should report it in accordance with Article 4 SFTR.

148. ESMA proposed in the CP guidance for reporting of intragroup SFTs.

149. Respondents did not provide specific comments in relation to this item.

150. Against this backdrop, the Guidelines include the elements provided in the CP.

151. Finally, due to lacking legal basis, ESMA is not taking into account the general suggestion made by two respondents in favour of an exemption from reporting for intra-group transactions similar to the provisions of EMIR Refit.

3.7 Reporting by an NFC

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.

152. Article 33(2)(a)(iv) SFTR provides that non-financial counterparties must comply with the SFTR reporting obligation 21 months after the regulation enters into force.

153. ESMA proposed in the CP an approach for reporting by NFCs. The approach provides that under Article 33(2)(a)(iv) of SFTR, non-financial counterparties must comply with the SFTR reporting obligation 21 months after the regulation enters into force. Ahead of that date, non-financial counterparties are expected to prepare their systems so that they will be ready to fully comply with the obligation on that date.

154. In particular, ESMA indicated that when the SFT is concluded between two NFCs, both of them need to report it to a TR, though they can make use of the possibility to delegate the reporting under Article 4(2) to one of them or to a third party.

155. Respondents did not provide specific comments on this item other than the ones already provided under Question 13.

156. Against this backdrop, the Guidelines include the elements provided in the CP.

3.8 Timely reporting of conclusion, modification and termination of an SFT

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

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

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

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.

157. Article 4(1) SFTR provides that "Counterparties to SFTs shall report the details of any SFT they have concluded, as well as any modification or termination thereof, to a TR registered in accordance with Article 5 or recognised in accordance with Article 19. Those details shall be reported no later than the working day following the conclusion, modification or termination of the transaction".

158. In the CP ESMA proposed further clarification regarding the timeliness of reports regarding conclusion, modification and correction of an SFT as well as of reports regarding collateral, valuation, margin and reuse updates.

159. With respect to conclusion, several respondents commented on the proposal that "an SFT that is concluded is subsequently cancelled or not completed, due to reasons attributable to the counterparties or to third parties, such as CCPs or CSDs," should be cancelled with action type "Error". In particular, the respondents brought to ESMA attention an inconsistency between this proposal and the Table 5 of the CP, according to which a settlement fail would be reported as Early termination. Two respondents stated that Action Type "Error" could potentially be used when a transaction which is conditional upon registration with the CCP is rejected by the CCP. Overall, the respondents had split views regarding the Action Type that should be used in the scenario described in the CP, however ESMA agrees with the argument raised by some respondents that Action Type "Error" should not be used to terminate valid transactions. Therefore, ESMA has amended the guidance accordingly and also included more clarifications regarding a broader approach to capturing settlement fails in the reporting.

160. One respondent commented that agent lenders may reallocate SFTs between funds after execution but before settlement as result of a fund selling the asset subject to the SFT, in which case the SFTs subject to full reallocations should be terminated with action type "Termination/Early termination" and the SFTs subject to part reallocations - should be modified with action type "Modification". All new SFTs resulting from reallocation activity would be reported using the action type "New". ESMA has included these scenarios in the

table illustrating the mapping between business events and action types in Section 4.10 of the Guidelines.

161. From the point in time upon which the entities conclude an SFT, the transaction becomes a reportable transaction.

162. Reporting of the conclusion of an SFT is intrinsically linked to the main purpose of SFTR, namely "enhancing the transparency of certain activities in financial markets such as the use of SFTs and reuse of collateral in order to enable the monitoring and identification of the corresponding risks".

163. With respect to the reporting of modifications, ESMA proposed in the CP that the modifications should be reported only after they have taken place. Most of the comments received related to the need for further clarity regarding the meaning of "taken place". Different interpretations were offered by the respondents, ranging from (i) the time when a modification is agreed and booked, through to (ii) the contractually agreed effective date of modification or expected settlement date, to (iii) the actual settlement date. ESMA has addressed this question in the Guidelines and additionally included a table clarifying when it is considered that a reportable event takes place (i.e. what is the "event date" for each action type).

164. A clarification was requested regarding the reporting of back-dated modifications. In a scenario provided by the respondent the counterparties to an SFT bilaterally agree to re-rate a transaction with an effective date in the past and clarity is sought whether in such scenarios firms would be required to resubmit reports for all subsequent activities from the effective date of the back-dated modification. ESMA has amended the Guidelines to clarify the correct approach to reporting in such a scenario. ESMA has also clarified in Section 4.8.3 how the back-dated modifications (as well as valuations and collateral, margin and reuse updates) should be treated by the TRs.

165. Another respondent asked if a counterparty can send only a final, correct report in the case where it makes a modification to an SFT in their own system and later identifies it was incorrect and amends it prior to reporting to the TR. ESMA confirmed in the Guidelines that only the correct report should be sent in such a case.

166. Regarding the timeline of reporting of collateral updates, ESMA proposed in the CP that it is the same as for the conclusion of a trade, except for the cases referred to in Articles 3(6) and 3(7) RTS. Furthermore, ESMA proposed that reporting counterparties should report only the collateral updates that have taken place, and not those that are agreed, but have not yet taken place.

167. A few respondents asked whether collateral update reports should refer to the agreed settlement time or the time at which settlement takes place, with split preferences being expressed by these respondents. Some of them highlighted that the fact that the loan side does not settle is not visible in the report, therefore collateral should be reported consistently. Other respondents suggested that only settled/received collateral should be reported, one of them noted however that with regards to investment funds, asset managers may face the problem of getting knowledge about the receipt of collateral immediately thereafter, hence making the receipt of collateral the reporting trigger may create new operational burdens. ESMA took note of the arguments raised by the

respondents and provided further guidance on the reporting of collateral, aligning the approach with the one used for the reporting of modifications to the loan side of the transaction.

168. Respondents noted that collateral substitutions may take place multiple times during the day and requested clarity whether only EOD state of the collateral should be reported. Furthermore, one respondent suggested that a time for a snapshot of the collateral should be agreed upon. ESMA has included a clarification in this respect in the Guidelines.

169. One respondent explained that in the case of margin lending where there is no short market value and no net debit balance (i.e. no margin loan), the prime broker may still be holding collateral, but this collateral will be collateralising non-SFT exposures. The respondent asked if the collateral updates should be sent in such scenario. In this respect ESMA clarified what should be reported, first in the case where the margin loan has not yet been used by the client, and second when the margin loan previously existed but goes to zero at a certain point while there is no short market value.

170. Two respondents asked how collateral updates should be reported for cleared trades since the allowed sequences of action types do not permit to report "Collateral Update" event after an action type "Position Component". Additional clarification in this respect has been included in the Guidelines.

171. With regards to the timeliness of reporting of valuation, margin and reuse updates, ESMA proposed that the timeline for their reporting should be the same as for the conclusion of an SFT. The respondents requested a few clarifications on the specific aspects related to these reports.

172. In particular, four respondents asked if the same timeline should apply to the reporting of reuse given that the reuse metrics are settlement driven, as clearly stated in ESMA's final report on the RTS (para. 324). Another respondent asked if reuse reports are absolute or delta updates. ESMA confirmed in the Guidelines that the reporting of reuse is based on the settled values and that it is a snapshot report. This approach is also consistent with reporting of collateral for the non-cleared SFTs, which is expected only when there are outstanding reportable exposures. It is not expected either to create inconsistencies with the reporting of reuse, given that non-cash collateral posted as margins to CCPs cannot be reused.

173. One respondent asked whether margins pre-paid to a CCP in advance of a portfolio of trades being cleared, must be reported on Lodge date+1 (L+1) or on T+1 of the first applicable trade in the related portfolio. The respondent highlighted the operational complexities related to the latter option and noted that if these margins are to form a part of CCP reuse calculations then not reporting on L+1 will cause abnormal reuse numbers to be reported. ESMA has taken note of this comment and covered additionally this specific point in the guidelines.

174. Several respondents have raised in their feedback to the questions on timeliness of reporting other related issues.

175. One of the respondents commented on a use of Action Type "Error" and asked for a solution to undo such report if sent erroneously. However, in order to avoid a situation in which entities could reuse the UTIs as well as to be consistent with the reporting logic

implemented under EMIR, ESMA does not change the approach to the use of action type "Error" which does not allow for reopening of a transaction for which this action type was reported.

176. One respondent asked if a final report with Action type "Collateral Update" and/or "Termination/early termination" should be reported on the maturity date of the term SFT. Furthermore, respondents asked for clarification regarding the reporting of terminations (e.g. when to use Action Type "Termination/Early termination" and when "Modification") as well as what to report if a termination is cancelled due to a settlement failure. ESMA has taken note of the questions and included the relevant clarifications in the Guidelines.

177. The above approach aims at preventing situations where counterparties report terminations of the SFTs which do not settle and – in the case where a termination is cancelled – the counterparties would consequently need to re-report the terminated SFTs with new UTIs (given that the same UTI cannot be reported again with action type "New", and there is no possibility to "reopen" a terminated transactions).

178. A few questions were raised with respect to the dependency between the Event date and the reporting of action types. This topic has been addressed by ESMA in more detail in Section 4.8.3 of the Guidelines dedicated to the sequencing of action types.

179. A few respondents also requested a clarification as to how to report zero collateral and zero reuse. Two respondents provided examples of such reports in a way that would require the counterparties to populate a minimum subset of fields required in the respective reports, in this way facilitating the reconciliation of the reports. ESMA considered this proposal and amended the Guidelines accordingly by including these use cases in Sections 5.4.4 and 5.6.3 of the Guidelines containing the specific examples.

180. One respondent suggested to use the same action type for reporting both modifications and corrections, however this proposal is not compliant with the technical standards, therefore it cannot be considered. ESMA did not take into account a request of a respondent for optionality of reporting for the clients of prime brokers, as such optionality would be in conflict with SFTR.

3.9 Treatment of reports submitted by entities mentioned in Article 2(2) and 2(3) of SFTR

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.

181. SFTR explains that the reporting obligation and the requirements relating to reuse of collateral do not apply to transactions when one counterparty is a member of the ESCB, or a member states' body which performs a similar function, or another Union public body charged with/intervening in the management of the public debt, or the Bank for International Settlements.

182. In addition, Article 2(3) of SFTR confirms that the reporting obligation does not apply when one counterparty is a member of the ESCB. In the ESMA CP on reporting guidelines under

SFTR, ESMA proposed that in the event an entity referred to in Article 2(2) or Article 2(3) reports a transaction to a TR, the TR should reject the report.

183. Five respondents commented on this guideline, and most requested additional guidance on how these reports should be treated.

184. Some respondents indicated it would be difficult to determine whether a counterparty is one of those listed in Article 2(2) and Article 2(3). The respondents therefore requested guidance on how to exclude reports from the ESCB and similar bodies. Respondents suggested that a distribution list for TRs which answered this question might be useful to ensure all TRs exclude reports from the same "similar bodies" etc.

185. Another respondent compared these requirements to EMIR, explaining that the SFTR requirement effectively requires a TR to conduct a validation as to whether a firm is over reporting, rather than placing the obligation on the firm to report correctly. The ambiguity in the Level 1 was referred to, and it was suggested that ESMA provided TRs with a definitive list to ensure this "validation" is done consistently by TRs. The respondent asked whether TRs are expected to reject reports where any of the named counterparties are the reporting Counterparty or the other Counterparty and asked whether there will be a specific rejection reason attributable to this type of rejection. There will not be a specific rejection reason for these types of rejection. The Guidelines on rejection have been updated to explain this.

186. While, no respondent was against the provision of additional guidance for TRs, ESMA is not in a position to provide a list of entities covered by these articles, as pursuant to Article 2(4) SFTR the EC is empowered to adopt delegated acts to amend the list of Article 2(2). The identification of members of ESCB is available in the GLEIF, however ESMA notes this does not capture all public debt management organisations.

3.10 Identification of a CSD participant

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.

187. As explained in the CP, counterparties should always populate the field "Central Securities Depository (CSD) participant or indirect participant" even in scenarios when an SFT settles outside a CSD. ESMA asked consultation respondents whether they felt additional guidance was needed for the reporting of this field.

188. There were 12 responses to this question. The proposals in the CP's guidelines were generally supported by respondents.

189. Participants presented cases where this field is not applicable according to the Level 2 reporting standards. It is correct that the field is not applicable to commodities transactions. It is correct that the field is not applicable to margin lending transactions.

190. One respondent suggested that when the reporting counterparty is using an Agent Lender / Custodian for the instruction of SFTs (irrespective of whether the reporting counterparty

is the CSD participant or not), the reporting counterparty should report the LEI of the custodian bank irrespective of whether the custodian is using a sub-custodian or not.

191. Some respondents indicated that while the rules are clear, it would be difficult to know in practise whether the custodian is a direct or indirect CSD participant.

192. Based on this feedback the guidelines proposed in the CP will be maintained as listed below and a further guideline will be included which confirms the approach that should be followed when a counterparty uses an Agent Lender or a Custodian.

3.11 Action Types

3.11.1 Applicable action types

193. As provided in Article 5(3) of ITS on reporting "A counterparty to an outstanding SFT shall report any modification of the details relating to the collateral data in Fields 75 to 94 of Table 2 of Annex I with action type "Collateral update"." Furthermore, it is specified that "The counterparty shall report those modified details as they stand at the end of each day until it reports the termination of the SFT, or it reports the SFT with action type "Error", or until the SFT reaches its maturity date, whichever is the earlier." For more detailed information on the timeliness of reporting of the lifecycle events relating to an SFT, please refer to section 4.9.

194. For the purpose of reporting the SFT lifecycle events, the action types listed immediately below apply.

195. Loan and Collateral Data (Table 2 of the Annex to ITS on reporting):

    a. New (NEWT) – SFT reported for the first time, in which case it will be identified as "new";

    b. Modification (MODI) – a modification (other than defined in CORR, VALU and COLU) of a previously reported SFT in which case it will be identified as "Modification";

    c. Valuation update (VALU) – a valuation of the security or commodity used in a securities or commodities lending transaction, in which case it will be identified as "Valuation Update";

    d. Collateral update (COLU) – a modification of the details of collateral data, including its valuation, in which case it will be identified as "Collateral update";

    e. Error (EROR) – a cancellation of a wrongly submitted entire report, e.g. in cases the SFT never came into existence or was not subject to SFTR reporting requirements but was reported to a TR by mistake, in which case, it will be identified as "Error";

    f. Correction (CORR) – a previously submitted report contains erroneous data fields, in which case the report correcting the erroneous data fields of the previous report shall be identified as "Correction";

    g. Termination/Early termination (ETRM) – a termination of an open-term SFT or an early termination of a fixed-term SFT, in which case it will be identified as "Termination /Early termination";

h. Position component (POSC) – an SFT that is to be reported as a new trade and included in a separate position report on the same day, in which case it will be identified as a "Position component".

196. Margin Data (Table 3 of the Annex to ITS on reporting), applicable only to CCP-cleared SFTs:

   a. New (NEWT) – a new margin balance, in which case it will be identified as "New";

   b. Margin update (MARU) – a modification of the details of the margins in which case it will be identified as "Margin update";

   c. Error (EROR) – a cancellation of a wrongly submitted entire report, in which case, it will be identified as "Error";

   d. Correction (CORR) – a previously submitted report contains erroneous data fields, in which case the report correcting the erroneous data fields of the previous report shall be identified as "Correction";

197. Reuse, Cash Reinvestment and Funding Sources Data (Table 4 of the Annex to ITS on reporting):

   a. New (NEWT) – a new reuse or cash collateral reinvestment balance, in which case it will be identified as "New";

   b. Reuse update (REUU) – a modification of the details of the reuse or cash collateral reinvestment, in which case it will be identified as "Reuse update";

   c. Error (EROR) – a cancellation of a wrongly submitted entire report, in which case, it will be identified as "Error";

   d. Correction (CORR) – a previously submitted report contains erroneous data fields, in which case the report correcting the erroneous data fields of the previous report shall be identified as "Correction".

3.11.2 Full snapshot versus partial reporting on amendments to SFTs

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.

198. ESMA proposed in the CP two alternative approaches with regards to the reporting of amendments, both lifecycle events and corrections, pertaining to SFTs in order to ensure that such amendments are reported in an efficient and accurate manner.

199. Under Proposal A, reporting counterparties should submit messages where the template requires all fields (including those which have not altered) to be reported, still allowing for separate reporting between loan and collateral data. Under Proposal B, reporting counterparties should submit messages where the template requires only the amended data fields to be reported.

200. The vast majority of the respondents supported the Proposal A stating that this option is less complex, reduces operational risk and helps ensure data integrity. Furthermore,

according to the respondents, alternative A is less costly and technically easier to implement. It also avoids a potential complexity of interpreting blank values (which could be understood as genuine reporting of empty value, as no change from the previously reported value or as an omission). It has also been mentioned that this approach has already been implemented by many firms for the purpose of EMIR reporting. Finally, from the TRs perspective, full reporting would facilitate validation of the reports by the TRs.

201. Taking into consideration the received feedback, ESMA understands that full messages should be required for the purpose of reporting of amendments. This should ensure higher data quality and is not expected to trigger any additional material costs to the parties involved in the reporting process.

202. Moreover, following the receipt of the feedback and the choice of alternative, ESMA is including the following additional clarifications to the Guidelines.

203. One respondent asked if partial reporting should be used for valuation and collateral updates. ESMA has clarified in the Guidelines the approach to reporting of valuation, collateral, margin and reuse updates to address this point.

204. One respondent asked if TRs will need to ensure that the content of certain fields is not amended when reported with Action Type "MODI". This aspect has also been covered in the Guidelines.

205. Against this backdrop, the Guidelines have been redrafted accordingly.

206. Finally, ESMA is not taking into account the proposal made by one respondent suggesting the reporting of collateral changes as the closing/reopening of a transaction, because the termination and conclusion of an SFT should be reported only when they take place.

3.11.3 Sequence between action types for the different types of messages

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

207. ESMA has included in the CP the tables illustrating allowable sequences of action types for (i) Counterparty, loan and collateral data, (ii) margin data and (iii) reuse, cash reinvestments and funding sources data.

208. The proposal has been generally supported (or not objected) by most respondents, however a number of questions and observations has been raised in the received feedback. The following comments have been addressed in the Guidelines, by amending the table and/or by including additional clarifications:

209. Several respondents requested additional clarifications with respect to the reporting of Action Type "Error", in particular whether the restriction concerning submission of subsequent reports for the same UTI applies to both counterparties or only the one that had sent the "Error" report, and if there is a way to undo an Error message.

210. One respondent asked if the event date should be considered by the TRs in validating the correct sequencing and commented that this would put data integrity at risk.

211. One respondent asked about the correct approach for reporting in the case of multiple rejections, in particular whether an entity should resubmit all the past events. The respondent commented that they would like to adopt an approach under which an entity continues to report with action type "New" until a report is accepted.

212. Two respondents asked why the action type "Position component" can only be followed by "Error" or "Correction" (and cannot be followed by other action types like, for example, action type "New"). Two other respondents asked if they must report collateral updates following to action type "Position component".

213. Two respondents commented that a collateral update is not possible after a termination and noted that in practice it is possible to substitute a collateral update during the time when an evergreen trade has been closed out, but the SFTs's maturity date has not been reached.

214. One respondent asked if it is necessary to submit another early termination message following the correction to a trade which has been the subject of an early termination.

215. One respondent asked if reporting Correction after the "Position Component" should enable any other type of action types.

216. Respondents asked for guidance on action types or their combinations that should be reported in specific use cases – these inputs were incorporated into Section 4.10 of the Guidelines dedicated to the mapping between business events and action types.

217. On top of the validation rules that help to ensure the correctness of the specific data elements as well as the internal consistency of the report, it is important to control, to the extent feasible, the logical coherence between the different reports sent for the same transaction.

218. Reviewing the "Event date" (Field 2.3) for the purpose of validating the correct sequencing by the TRs and applying the changes to the trade state reports would be very complex and operationally challenging.

219. The following comments were not considered in the Guidelines:

   a. Two respondents noted that for margin and reuse updates, there is no termination event, so entities would need to keep the all historic positions (for more than required 5 years) to correctly decide if in case of a new balance to report action type "Margin update" / "Reuse update" or "New". They would prefer to report only "updates" and avoid action type "New" for these two types of reports. This proposal however is not compliant with the RTS which require use of action type "New" when reporting margin or reuse for the first time. Furthermore, ESMA understands that in the probably rare situations where an entity did not have to report margins or reuse for 5 years and then needs to submit such a report, and the entity does not store information for more 5 years, the only risk is that it's first report submitted after that time is rejected due to incorrect action type (in which case the entity would need to resubmit it with a correct action type).

   b. Six respondents suggested that action type "Modification" should be allowed after "Termination/Early termination" in order to allow reporting following a cancellation of a full return. The suggestion to use the "Modification" to undo the previously

submitted "Termination/Early termination" was rejected as inconsistent with the overall reporting logic which does not allow for reopening of the non-outstanding trades. Further clarifications concerning the reporting in the case of a cancellation of a full return were included in Sections 4.8 and 4.10 of the Guidelines. In this regard it is clarified that back-dated modifications should refer only to fields that do not impact the status of the SFT – outstanding or terminated/matured.

c. One respondent noted that action type "Position Component" allows for a subsequent Correction, but action types "New" and "Position Component" are not fully identical in terms of reporting. Therefore, different validations should be applicable in each case in order to be consistent with the initial action type. ESMA considers that such enhanced validations, while theoretically possible, would be more complex to implement as they would require the TRs to implement different validations depending on the action types reported in previous submissions for a given UTI. This approach may be reconsidered at a later stage if needed.

3.12 Mapping business events to action types and levels

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.

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

220. Certain business events may be carried out by either amending an existing transaction or by terminating it and replacing with a new one. For simplicity, these events are represented in the table as amendments to existing transactions (action type "Modification").

221. To facilitate the implementation, ESMA has included in the CP a table with a mapping between the business events that take place through the lifecycle of an SFT and the action types that are defined in the TS on reporting. Several respondents indicated that such guidance is helpful, and a few respondents have also proposed additional business events to be included in the table. At the same time, many respondents have also raised questions or reservations regarding some of the specific proposals:

222. Several respondents commented that a simple settlement fail should not be reported as ETRM and that a "delayed settlement" should be included in the table separately from the counterparty default. The respondents have provided different suggestions regarding reporting of settlement fails, in particular, whether the settlement itself (or its failure) should trigger a report.

223. Two respondents commented that the counterparty default does not necessarily lead to cancellation of a trade.

224. Two respondents stated that default of the collateral issuer should be reported as "Collateral update" and not "Termination/early termination", as per GMRA, a repo can't be terminated due to default of the collateral issuer. Instead, the collateral would likely be substituted or margined.

225. Two respondents highlighted that certain events could be reported either as "Modification" or as a combination of "Termination/early termination" and "New", the latter option being applicable where the counterparties have contractually agreed to close out the previous trade and enter into a new trade with a new UTI. Another respondent specifically suggested that a partial close out of an open trade is booked as termination and new, whereas Guidelines envisage reporting of "Modification". Also, respondents presented diverging views regarding the action type to be used in the case of extending a repo ("Modification" or "New").

226. One respondent stated that partial termination does not apply to SLB.

227. Several respondents stated that change of allocation ahead of settlement (which is common) should be reported as a combination of "termination/early termination" and "New" rather than "Error" and "New". Two respondents commented that in their understanding this scenario relates to a change of beneficial owners within an agency transaction prior to settlement (which can happen both ahead of and after settlement) and recommended renaming the business event as "change of principal allocated to agency transaction". Another respondent proposed to rename it to "change of agent lender allocation, full reallocation to a new UTI" and add further events (e.g. partial allocation, allocation to an existing UTI).

228. With respect to the allocation of securities to loan, one respondent commented that securities are not allocated but rather agreed at the time of execution. Another respondent asked to distinguish clearly between the allocation of block trade and allocation of collateral.

229. Two respondents have proposed further clarification regarding the reporting of early termination, in particular when the counterparties should use action type "Termination/early termination" and when action type "Modification" (amending the Maturity date).

230. One respondent commented that in their view, the elimination of termination optionality would include the termination of an evergreen.

231. One respondent mentioned that in the case of margin lending the "Termination/early termination" should only be used in the case of terminating the relationship between prime broker and the client

232. With respect to the event of Additional base currency used for margin loan, one respondent asked to include a scenario with two base currencies in one margin loan transaction.

233. Two respondents commented that "Haircut or margin renegotiation" should be reported with "Collateral update" rather than "Modification".

234. With respect to the variation margining by CCP, one responded stated that any of the four allowable action types could be reported, rather than only "Margin update", depending on the specific use case.

235. Finally, a few respondents asked if the included list of business events is meant to be exhaustive.

236. ESMA has considered this feedback and amended the Guidelines by providing more clarifications regarding the table, expanding the scope of events covered, including in the table an additional column for comments/examples and amending some of the specific proposals.

237. Additional guidance on the sequence between the action types is included in Section 4.8.3. Some market participants consider that each business event requires a specific action type, useful as an alternative to be able to process modifications to the current / latest loan value, market value, quantity/nominal, collateral amount, fee/rebate rate. However, this suggestion was discarded during the consultation process of the TS on reporting, specifically because it (i) would have created greater complexity for reporting, (ii) deviated from the EMIR reporting processes, which had to be followed as per the mandate under SFTR and (iii) it would have furthermore required the reconciliation of the specific reports, not of the SFT itself.

238. Some of the received comments were related to other parts of the Guidelines and therefore were addressed in the corresponding sections of the document (e.g. treatment of reports by TR depending on event date addressed in the Section 4.8.3 of the Guidelines on sequencing of action types, or reporting of collateral haircuts renegotiated at master agreement level addressed in Section 5.4.5.1 of the Guidelines).

239. Additionally, the following comments were received which have not been addressed directly in the Guidelines:

    a. Two respondents asked how to handle the Action Type "Collateral update" in case of BSB/SBB given that in Table 2 of the Final Report this action type was not foreseen for these transactions. ESMA recognises that this is an unintended omission in the Final Report. However, the technical standards and validation rules allow for reporting "Collateral Update" for BSB/SBB and counterparties should follow the Guidelines accordingly.

    b. One respondent asked if the events that do not affect exposure need to be reported. The requirement to report "any modification" of the concluded SFT is set out in Article 4 of SFTR and must be followed by the counterparties.

    c. One respondent asked how to handle situations whereby a counterparty is put into default and whether TRs would need to step in and force early termination of specific trades. This proposal could not have been considered as TRs cannot undertake to report on behalf of their clients, and at this stage, no other way forward has been proposed.

3.13 Treatment of reports submitted by entities mentioned in Article 2(2) and 2(3) of SFTR

240. SFTR provides that the reporting obligation and the requirements relating to reuse of collateral do not apply to transactions when one counterparty is a member of the ESCB, or a member states' body which performs a similar function, or another Union public body charged with/intervening in the management of the public debt, or the Bank for International Settlements.

241. In addition, Article 2(3) of SFTR confirms that the reporting obligation does not apply when one counterparty is a member of the ESCB.

242. The obligation to report in line with Article 2(2) and Article 2(3) is upon the counterparties. TRs should ensure to have systems in place to reject reports submitted by the entities covered by Article 2(2) and to reject any SFT where a member of the ESCB, based on GLEIF, is being identified as either the reporting counterparty or the other counterparty.

3.14 Determining counterparty side

3.14.1 General case

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

243. ESMA proposed in the CP a process of determining the counterparty side for each type of SFTs.

244. Under ESMA's proposal, in the case of repos or BSBs, the buyer is the collateral taker, while the seller is the collateral provider; in the case of SLB or SFTs involving commodities, the lender is the collateral taker, while the borrower is the collateral provider; in the case of margin loans, the lender is the collateral taker, while the borrower is the collateral provider.

245. The vast majority of the respondents supported the proposal stating that the guidance is clear and sufficient.

246. Taking into consideration the received feedback, ESMA will keep the guidelines proposed in the CP and will add an additional reference when reporting the collateralisation on a net exposure basis.

3.14.2 CCP-cleared SFTs

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.

247. ESMA proposed in the CP a process of determining the counterparty side in the case of CCP-cleared SFTs.

248. Under ESMA proposal, as the CCP interposes itself between the two counterparties to the SFT, the CCP will be buyer to the seller, borrower to the lender, seller to the buyer and lender to the borrower. This characterisation needs to be aligned with the collateral provider and collateral taker definition in Article 4 of the ITS on reporting.

249. All the respondents supported the proposal.

250. Taking into consideration the received feedback, ESMA will keep the guidelines proposed in the CP.

3.14.3 Reporting of unsecured lending/borrowing of securities

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.

251. ESMA proposed in the CP a procedure for determining the counterparty side for unsecured lending/borrowing of securities.

252. ESMA proposes that the counterparty that lends the securities would report itself as collateral taker and the counterparty that borrows the securities would report itself as collateral provider.

253. The vast majority of the respondents supported the proposal. Two of the respondents found the use of the wording TAKE/GIVE confusing in the case of unsecured lending and borrowing of securities, where there is no transfer of collateral.

254. Since the wording proposed in the CP is defined in the Technical Standards, ESMA cannot modify the terminology.

255. Taking into consideration the received feedback and the fact that it would not be possible to change the terminology used, ESMA will keep the guidelines proposed in the CP.

3.15 Price and value fields

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

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

Q34.   Do you agree with the proposed approach? Please detail the reasons for your response.

256. This section covers the feedback to the reporting fields that concern price, currency and valuation of the collateral or loan side of the trades. Various problems might arise due to a different understanding or source, leading to possible reconciliation issues.

257. ESMA proposed in the CP to include any margin, add-on or discount that might apply to the security on the loan side of the trade in the "Security or commodity price" (Field 2.49) of SLB.

258. ESMA also set out a proposal for the calculation of "Loan value" (Field 2.56), and a general approach for the reporting of "Market value" (Field 2.57). The latter may be based for valuation purposes on a currency that differs from the currency in which the security is denominated, which could lead to reconciliation issues.

259. A very large majority of respondents indicated that margins, mark-ups, discounts or premia often apply on the loan side of the trade. This appears to be the case in bilateral SLB, but also in the context of fails-curing transactions. However, a large majority of respondents

also highlighted that the current market practice is not to include it in the security price or the loan value. Instead, margin requirements lead to a higher amount of collateral being posted. The same goes for any add-on and mark-up that might arise in the course of the transaction, which lead to increased collateralization.

260. Taking into consideration the feedback, ESMA understands that the information reported on the loan side of SLB should exclude any such margin requirement or add-on. Instead, the extra collateralisation requirement will be captured in the "Collateral market value" (Field 2.88). Since this information will not be reported separately, this implies that Field 2.88 will need to capture both the SLB margin requirement and any collateral haircut that applies, without a possibility to distinguish.

261. In addition, one respondent indicated that add-ons could be part of a CCP novation criteria. However, this would not have an impact on the reporting of collateral since CCP margins are reported separately.

262. Regarding "Loan value" (Field 2.56) and "Market value" (Field 2.57), a majority of respondents agreed with the proposal, which several deemed "in line with business practices". However, a few respondents asked for clarification regarding the terminology used, which has been taken on board in the Guidelines.

263. Concerning the currency used for reporting "Market value", counterparties should report separately the currency they have used for the valuation of the security. This is clarified in section 5.3.11 of the Guidelines. This currency may thus differ from the "Price currency" (Field 2.50) in which the security (and therefore the Loan value) is denominated. However, "Market value" will be used for reconciliation, that is, counterparties should agree on both the currency and the amount to be reported.

264. A minority of respondents argued that the "Loan value" should be reported in the currency agreed between the counterparties rather than the currency in which the security is denominated. However, this would have required the potential introduction of a third currency and lead to confusion.

3.15.1 Timing of valuations

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

265. The CP explained the importance of the valuations' timeliness. The consultation confirmed that the market value of securities should be reported as at close of business each business day, reflecting the valuation used for collateral management purposes.

266. The CP highlighted that counterparties should report the market value of their SFTs using the market prices and FX rates that those counterparties have used during the course of that business day for exposure management purposes. For securities lending transactions, this would generally mean that the market values reported as at close of business on any given day would be reported using the closing prices of the securities from the previous business day.

267. It is expected that this approach will allow counterparties to identify and fix any incorrect market prices / FX rates in their own systems before these are used to calculate an updated market value to be reported to a TR. One consultation respondent noted that the CP did not mention margin lending here and requested ESMA to confirm whether this guideline was intended also to cover margin lending SFTs. The respondent asked whether counterparties should report the market values and FX rates using the closing prices of the securities (used as collateral) as of the previous business day for all types of SFTs. ESMA can confirm that the guidelines relating to the timing of valuations are applicable to all types of SFTs when relating to collateral, not only securities lending transactions for which is relevant also for the loan side. Overall, there were 22 respondents to this question. Six of those respondents were in full agreement with the proposed approach.

268. Two respondents flagged general agreement, however, noted that timings will differ between counterparties due to time zones and different close of business and hence argued for differences in prices reported. ESMA refers to the thresholds included in the technical standards which allow for differences in prices. This is included in the technical standards, and the Guidelines cannot increase these tolerance levels.

269. Respondents stressed the differences in cut-off times and data vendors used by firms which they flagged indicated that the reconciliation of the valuation fields will be difficult. Most stressed that internally, different approaches will be used by firms at an enterprise level (not by transaction) for risk and exposure monitoring and that this will complicate their internal management.

270. Some respondents suggested that mismatches in reconciliations could be due to erroneous market prices/FX rates but also global cut-off times for FX and different market data vendors. For example, which FX rate should be used for loan value fixing. Additional guidance was requested in relation to sourcing and timing (it was felt alignment between counterparties with different data vendors/cut-off times etc. will be difficult).

271. One respondent proposed a solution based on their internal reconciliation system where ECB FX rates are used to align haircuts in collateral management systems. This is an appropriate rate to use when available to ensure the consistent reporting of valuations in the original currency of the financial instrument. This was included in the Guidelines. One respondent referred to the reference ESMA made in paragraph 159 of the CP to "valuations for two different days" being provided. The respondent said this was not a clear statement. ESMA can confirm that the purpose of this paragraph was to confirm that if more than one valuation is reported by a firm, then each valuation should correctly report the field "Event Date" according to the specific valuation. These reports could be submitted on the same day or different days.

272. One respondent flagged that industry normally uses FX rates at an enterprise level, also for risk and exposure monitoring. The respondent indicated that changing the FX and valuation policies used globally would be significant for firms. ESMA recognises this as a necessary cost of the regulation.

273. Respondents flagged that these rates are sourced from enterprise books and records, not external sources, therefore, the respondent said that breaks in reconciliations will be common. This was supported by several other respondents, who flagged that these

rates/timings aren't transaction specific for firms and that changing the approach at a firm related to risk/exposure management to simply fix an SFTR reconciliation break is burdensome. The respondent felt the reporting should reflect what is in a firm's internal systems. The tolerance levels need to be increased to a more realistic level.

274. Another respondent requested that CCPs be defined as holders of the "Golden Source" for FX rates and conversions on cleared trades, such that market participants are required to match the CCP. This is not a solution which we can follow as it would impose an additional obligation on counterparties to source the data which they should already have available in their systems from a CCP.

275. It is not possible to increase reconciliation tolerance levels. These tolerance levels are specified in the Annex to the RTS on data collection and must be complied with. Counterparties should note that reconciliations for the fields referring to valuations will not begin in April 2020.

276. ESMA notes the feedback in relation to the difficulties of reconciling valuation fields. However, it is important to recognise that these fields do not need to reconcile immediately. As specified in the Annex to the RTS on data collection, multiple fields relating to rates, prices and valuations are not reconcilable until 24 months after the start of reporting for entities under Article 33(2)(a)(iv) SFTR, i.e. 33 months after 11 April 2020.

277. This timeline will allow counterparties to familiarise themselves with reporting requirements and these reporting guidelines and ensure they report in a manner which will lead to successful reconciliations of these fields.

3.15.2 Calculation method for valuations

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

278. The Level 2 SFTR standards require counterparties to provide market valuations for SLB and SFTs' collateral.

279. When there is no market value available, SFTR does not prescribe a specific method for calculating valuations.

280. Fields 2.57 and 2.88 are, however, reconcilable. Therefore, it is important that counterparties report values which are within the accepted limits of tolerance difference.

281. In the CP, ESMA asked whether there was a need to provide additional guidance on the reporting of the valuation fields.

282. There were twenty respondents to this question. Most respondents did not see a need for additional guidance at this point in time.

283. Some feedback received was similar to that received in response to Q 35. For example, in relation to the use of FX rates. Please see the response to Q35 in relation to respondents' feedback on wider tolerance levels and the implication for reconciliations.

284. One respondent requested ESMA to provide additional guidance in relation to a fall-back scenario when a market price of a security isn't available. ESMA can confirm that when

reporting under SFTR, counterparties should use the value they use for collateral management and exposure management purposes and so there should not be a need for a fall-back scenario.

285. Another respondent suggested that guidance should be included for ensuring that counterparties engage to agree on a common valuation. This requirement is not included in the regulation, and it would impose an additional requirement upon counterparties.

286. Respondents referred to the limited tolerance levels for the fields subject to valuations as part of the reconciliation process. ESMA refers readers to the response to Q35 in this final report which confirms the timeframe before the relevant fields will begin to be reconciled. One respondent asked for ESMA to explain the reasoning for the size of the tolerance levels. ESMA consulted on these tolerance levels when drafting the level two reporting standards and accompanying Annex.

287. A respondent again suggested (as they did in response to Q35) that ESMA could include some guidance that indicated a CCP should be the holder of the "golden source" for valuation fields on cleared trades. The feedback section in response to Q35 addresses this point.

288. One respondent highlighted what they thought was an issue with the validation rules which say that the field "Market value" is optional on a new trade which could mean the market value of securities at close of business is not reported, and instead, it is added with a valuation update at the end of day. When an intraday trade is reported, this would be complicated because by the end of day a termination message will have been applied, and a valuation update will not be allowed. This trade would still need reconciliation, but to ensure the market value is correct, the only way to add it would be to use a correction message. Alternative solutions were suggested for intra-day trades, making Field 2.57 mandatory for a new trade, providing guidance on how to state a market value for a new trade (specifically for this scenario), or advising all TRs not to reconcile this field for intra-day trades/once a trade is terminated.

289. ESMA can confirm that Field 2.57 "Market value" is an optional field for an SFT report with action types "NEWT" and "POSC". Therefore, it can be reported for a new SFT trade.

290. Based on the feedback to Q35 and Q36 the guidelines proposed in the CP should be maintained with the addition of a guideline to specify the FX rate to be used in the event a security's market value is defined in a different currency to the currency of that security. The Guidelines were amended including the additional guidance on the use of ECB rates when applicable.

3.16 Reporting of CFI for a security used as collateral

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.

291. In the CP ESMA established the use of the official sources for the CFI.

292. And according to this, several of the consultation responses sought clarification on the official sources for CFIs, and if the data from platforms in the market could be official. ESMA highlights that platforms are not an official source for the CFI and while FIRDS can be used as a reference point, counterparties should retrieve CFIs from ANNA, NNA or, if not available, request it at the relevant NNA of the instrument.

293. To ensure that CFI is always reported as a six-character code, and in line with the ISO 10962:2015, ESMA has provided some examples on how to build it following the procedure.

294. Taking into account the above, one respondent was concerned about the suggestion that each counterparty would need to build the CFI in case it is not available in the official source, and considered this option as suboptimal because it will inevitably lead to discrepancies.

295. Another respondent sought for clarification of whether the proposal would be only for those instruments for which the numbering agency has not assigned the CFI, in which case the counterparties will need to agree upon it.

296. On the contrary, in case of no availability of the CFIs, the industry proposed alternative solutions such as (i) dummy CFI, (ii) not to populate it if it is not available, or (iii) to establish a clear procedure on how to build it correctly by themselves. Since SFTR and its RTS require the CFI according to the ISO 10962 standard, ESMA rejects the aforementioned options as not compliant.

297. Therefore, ESMA recommends, in the case the CFI is not available in ANNA, to address a request to the relevant NNA. The Guidelines have been amended accordingly.

298. Moreover, clarification for which characters of the CFI will be reconcilable was requested too. ESMA states that the reconciliation affects the CFI as a whole.

299. Finally, one respondent considered that CFI code might be used by the industry for the derivation of further classification in Fields 2.55 "Security type" or 2.94 "Collateral type", and highlighted that information currently contained in the CFI is not sufficient to derive completely the classification required within those fields. ESMA clarifies that these fields do not rely on the CFI and are independent.

3.17 Backloading

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.

300. SFTR provides that the reporting obligation applies to SFTs concluded before the relevant RSD (which is determined by the type of reporting counterparty) which remain outstanding on that date if their remaining maturity exceeded 180 days, or the SFT had an open maturity and remained outstanding 180 days after the date of application, i.e. Reporting

Start Date (RSD)+180. SFTR thus requires that these SFTs are backloaded by reporting counterparties within 190 days of the relevant RSD.

301. ESMA recognises the need to ensure that the reporting of SFTs is done in an efficient manner which (i) enables authorities to receive all the necessary information required to fulfil their mandates and (ii) which ensures that reporting counterparties or the entities responsible for reporting are in possession of all the information required for reporting. ESMA has considered the most appropriate approach to the SFTR back-loading requirement.

302. In case all fixed-term and open SFTs, executed prior to relevant RSD for the reporting counterparty which are still live on the RSD for that counterparty at the date of application, are reported on that date, regardless of whether they meet the requirements of SFTR for transactions to be back-loaded, the only additional burden for reporting counterparties or the entities responsible for reporting will be the retrieval of data for these SFT.

303. This approach may also allow authorities to greater information in relation to variation margin, as it is calculated by looking at the net exposure across multiple open transactions, some of which otherwise may not have been reported if the more restrictive approach prescribed in the level one regulation was followed. In addition, the collateral update reports would be required from the date of application, and these updates would be more useful if they could be considered alongside the original transaction reports which they related to, as would be the study of terminations and modifications.

304. ESMA recognises the potential burdens associated with this approach, primarily the increased number of transactions which would need to be reported (including those with less than 180 days to maturity), and secondly the one linked to the reporting of the modification and termination of pre-RSD (reporting start date) open repos during the period from RSD to RSD+180.

305. ESMA proposed in the CP that for a full reporting of backloaded SFTs at Reporting Start Date (RSD) to happen:

   a. in cases where the RSD for the other counterparty has not yet kicked in, the reporting counterparty or the entity responsible for reporting should report its side of all the SFTs; or

   b. In case they are not covered by the RSD, both counterparties agreed to report this way.

306. When the SFTs are backloaded for the first time, only the state at the time of reporting (at the time of the backloading) should be reported. The previous lifecycle events should not be reported separately.

307. Moreover, Article 33(2) SFTR establishes four different RSD. This might result in some SFTs been backloaded by one counterparty and not backloaded by the other counterparty.

308. While from a counterparty's perspective the burdens to report transactions which might not be subject to the backloading requirement together with the daily update of collateral, may not be significant when compared to the costs required to distinguish between the historic transactions to determine whether they need to be reported, there is no

requirement to do so. The possibility of a full backloading at RSD for all counterparties is optional.

309. The vast majority of the respondents did not show support for the proposal that a mandatory obligation to backload transactions for counterparties on RSD should be implemented. According to the respondents, the delayed back-loading model would allow the industry to focus on the reporting issues avoiding:

   a. the risk of data not being accurate and over-reporting;

   b. the risk of unpaired trades in case of discretionary backload;

   c. the risk that counterparties have not implemented the necessary processes and operating models by RSD.

310. Taking into consideration the received feedback, ESMA understands that due to the fact that the timeline for backloading is provided by Article 4(1) SFTR and due to the possible operational consequences of a full reporting of backloaded SFTs starting at RSD, the possibility of a full backloading at RSD for all counterparties should be seen as optional. However, in case counterparties, who do not have the obligation to report on the RSD, prefer to report on the RSD, they should ensure that complete and accurate details of the backloaded transactions are reported. This will ensure higher data quality in the reporting process.

311. Moreover, following the receipt of the feedback, ESMA is including the following additional clarifications in the Guidelines.

   a. One respondent asked for additional guidance concerning the backloaded transactions (if they have to be reported as action type "NEWT") and data fields (such as "Execution timestamp" and "Event date"). ESMA has clarified in the Guidelines the approach to address this point.

   b. One respondent asked if the wording of point 171 of the CP could be adjusted in general. This aspect has also been covered in the Guidelines.

312. Against this backdrop, the Guidelines have been redrafted accordingly.

313. Finally, ESMA is not taking into account the proposals made by respondents suggesting amendments to the Level 1 requirements on backloading. Namely, these refer to report SFTs with an open maturity date or with a maturity date of at least 90 calendar days after the reporting start date or the one for complete removal of the backloading requirement.

3.18 UTI generation and structure

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

314. ESMA proposed to align the rules for generating a UTI under SFTR to those applicable for the purpose of reporting under Article 9 of EMIR. The consultation document also included a flowchart representing the process for generating a UTI.

315. The paper also dealt with some specific scenarios which may impact the UTI generation process like the cleared SFTs and the renewal of open term SFTs.

316. Market participants were asked whether other aspects of UTI needed to be clarified.

317. ESMA's proposal on the alignment with EMIR and the UTI generation waterfall was supported globally, except for three respondents who are of the opinion that in case of securities lending transactions, the collateral taker is better placed than the collateral provider to generate the UTI.

318. The main concern expressed by the respondents is the situation where the entity that is to generate the UTI fails to do so in due time for meeting the reporting deadline. The industry expressed the need to define a consistent attitude to be adopted in such a case.

319. Five respondents ask for additional guidance on the generation algorithm and the format for the UTI, and two respondents ask to clarify how to proceed in order to correct a UTI, and how to prevent the unilateral accidental cancellation of a UTI by one of the counterparties, especially the non-generating party.

320. The waterfall is described in detail in Article 3(2) of the ITS on reporting.

321. ESMA has updated the Guidelines to clarify the steps to be taken by the entities in case there is an issue with the generation or communication of the UTI. The counterparties should ensure the timely solution of any issue related to the generation UTI.

322. On the UTI format, ESMA has included a reference to counterparties to follow, the CPMI-IOSCO guidance.

323. Finally, if the UTI itself is wrong, the relevant clarification has been included.

3.19 Identifying and reporting on beneficiaries

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

324. In the CP, ESMA stated that beneficiaries are always to be reported when they differ from the counterparty to the SFT in accordance with the RTS on reporting.

325. One respondent to the CP noted that allocation of LEIs for beneficiaries should be extended also to ring-fenced pools since they are eligible for an LEI and can constitute a different entity from counterparties as separate segregation of assets.

326. No other issue was raised by respondents. ESMA has updated the Guidelines accordingly.

3.20 Identification of issuer of securities and securities

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.

327. The CP stated that identification of the issuer is essential for the correct monitoring of financial stability, leverage and risks in the financial system. In most of the cases, specifically with regards to EU securities, the information on the issuer is typically available

to counterparties given other applicable EU legislation that requires issuers of financial instruments admitted to trading or traded in the EU to obtain an LEI.

328. To this extent, ESMA specified that LEIs of the issuer of the securities and ISINs of securities in the perimeter of reportable SFTs must be reported.

329. At the same time, certain securities used as collateral in transactions reportable under the SFTR requirements might belong to issuers that are not subject to the EU rules obliging them to obtain LEIs. This is specifically the case with some securities not admitted to trading or traded in the EU.

330. ESMA pointed out that the vast majority of securities used as collateral already have an ISIN. Moreover, CSDR requires the use of ISIN and LEI for any new security issued, implying that the residual absence of ISIN and LEI information for securities that are settled in the EU is bound to disappear.

331. Almost all respondents raised concerns about issuers LEIs and ISIN availability upon SFTR entry into force, especially for non-EU issuers, and called for a relaxation of the validation rule to make the fields conditional on availability or even optional.

332. While ESMA acknowledges that there may be cases where securities used as collateral might be issued by issuers that are not subject to the EU rules obliging them to obtain LEIs, and that similarly there may be instances in which a security cannot be identified with an ISIN, ESMA reiterates the importance of a correct identification of the issuer and issuance through the LEI and the ISIN in the context of SFTR reporting.

333. It is worth noting that in April 2019 the Global Legal Entity Identifier Foundation (GLEIF) and Association of National Numbering Agencies (ANNA) started to publish an open-source database containing the ISINs and the corresponding LEIs of the issuers. The daily ISIN-to-LEI relationship files[9], currently (as of May 2019) include new ISINs issued by early mover national numbering agencies (NNAs). It is expected that other NNAs will join the program going forward. Altogether, there are 116 NNAs responsible for issuing ISINs. This should further facilitate obtaining the information concerning the issuer of a security.

334. Since the monitoring of financial stability, leverage and risk in the financial markets are crucial, ESMA confirms the importance of correct identification of issuer and issuance through LEI and ISIN and reiterates the reporting by counterparties of these fields to reach the purposes of SFTR reporting.

3.21 Procedure when a counterparty undergoes a corporate action

335. As part of the feedback received to the CP, ESMA was requested to clarify how instances where the counterparty undergoes a corporate action, such as merger, acquisition or spin-off should be reported and whether the procedure applicable under ESMA EMIR Q&A 40 should be applied.

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[9] For more information and for the content of database please access: https://www.gleif.org/en/lei-data/lei-mapping/download-isin-to-lei-relationship-files/

336. ESMA has included in the Guidelines a section on the procedure to be applied to ensure a correct update of the SFTs.

3.22 Reporting in the phased-in period

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

337. Article 33(2)(a) SFTR sets out a staggered approach to the reporting start date. This is expected to facilitate the implementation of the reporting by entities that are not as frequent users of SFTs, such as the NFCs.

338. Therefore, in this interim period, the SFTs that are concluded between two counterparties, one for which the reporting obligation has kicked in and another one for which it has not, cannot be reconciled, as they are reported only by one of the counterparties.

339. ESMA stated that the counterparties for which the reporting obligation has not yet started should provide the counterparty for which the reporting obligation has commenced with all the relevant information in accordance with the TS on reporting

340. Secondly, should the counterparties who are not required to begin reporting in the initial phase (from April 2020) find it easier, they could start reporting in advance of the relevant reporting start date indicated in Article 33(2) (a) SFTR.

341. The majority of the respondents supported the proposal regarding the obligation for the non-reporting counterparty to provide information to the reporting counterparty. Six respondents were not in favour because there is no legal obligation in SFTR to provide relevant information earlier as required by the regulation. Some respondents stated that the non-reporting counterparties would not have enough time to be prepared to deliver this information, and it would put an undue burden of costs on them.

342. Taking into consideration the received feedback, ESMA understands that the reporting counterparty should receive the necessary information by the non-reporting counterparty in order to be able to report the transaction.

343. Against this backdrop, the Guidelines have been redrafted accordingly.

344. Finally, ESMA is not taking into account the proposal made by one respondent regarding the inclusion of a responsibility of the NFCs to deliver the necessary information in the Guidelines. Not only the NFCs but also other FCs have the obligation to deliver the information in a timely manner. Another respondent asked for tolerance for incompleteness in financial counterparties reporting. The respondent´s proposed that in case of voluntary reporting prior to the mandatory commencement date, errors and omissions should be not considered as breaches of the reporting obligation. Regarding this point, ESMA refers to Section 4.15 on Backloading ("If a reporting counterparty for whom the RSD has not yet kicked in decides to report backloading transactions, it must make sure that a full or complete reporting of the transactions is being delivered to the TRs for its side of the transaction").

4   SFTR Tables of fields

4.1   Table 1 Counterparty data

345. With regards to the counterparty data, ESMA consulted on several use cases.

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.

346. The CP referred to the counterparty data fields for various use cases.

347. Most respondents confirmed there were no other use cases which needed to be included in the Guidelines. One respondent indicated that in the context of prime brokerage margin lending, the two principal counterparties to the SFT are the prime broker and the client.

348. One respondent noted that the SFTR Level 1 provisions were generally sufficient. However, they noted that Table 6 in the CP indicated non-cleared SFTs concluded by UCITS funds could not be applicable to margin lending. The respondent flagged that UCITS cannot have a margin loan, nor can they go short and so such a scenario would not occur. However, ESMA has not taken on board, as UCITS can temporarily be short or a counterparty to a margin loan.

349. Another respondent felt that there were discrepancies around how to populate of the Field 2.18 "Agent Lender". According to the CP, the field is applicable to Repo, BSB and SL. Due to an omission in the RTS on reporting, the field is applicable only to Repo and SL. ESMA acknowledges this issue and advises that it is being corrected now through a corrigendum. One respondent asked what should be reported when there are two clearing members. When there are two clearing members, it is the clearing member of the reporting counterparty that should be reported in this field. In the ITS on reporting it is specified that this field should be reported with the responsible clearing member of the reporting counterparty where a trade is cleared (not required for margin lending transactions).

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.

350. Respondents highlighted that scenario 6.1.10 is currently not included in "Table 6 – Use cases" and needs to be included. Reference has now been made to this scenario in Table 6.

351. One respondent suggested that in the CP, "Table 14 – Non-cleared SFT with brokers, settled with a custodian bank" should say "Broker E" in Field 15. The guidelines have been amended accordingly.

352. The same respondent also suggested that for Tables 8, 10, 12, 16, 20, 24, 26, 28 & 30 of the CP the description of the scenario does not mention where the stock is settling. Without confirmation of where the stock is settling, it is impossible to ascertain how Field 17 should be populated. The final Guidelines clarify where the stock is settling.

353. One respondent requested ESMA to confirm that the counterparty in those reports is a participant of the CSD if that is the scenario which ESMA intends to explain.

354. Another respondent requested some amendments to the example relating to non-cleared SFTs where fund portfolio management is outsourced. They suggested "asset manager" should be replaced with "fund management company" which is clearer. ESMA amended the Guidelines accordingly.

355. The respondent also suggested that paragraph 210 of the CP (referring to situations where there is a non-cleared SFT where the fund's portfolio management is outsourced) should be expanded to clarify that a separate entity, to which portfolio management is delegated, would both i) act as an intermediary for the fund in executing SFTs, per the specific definition of "broker" in the RTS; and ii) submit the reporting associated with the trades it executes.

356. The respondent went on to explain that in that case, it would be identified in the report in the capacities of report submitting entity and broker. In contrast (and as suggested in Table 31) the respondent believed that the intention is that if the fund management company undertakes the trading itself, it would not fit the "broker" definition, being the mind and management of the fund itself. ESMA has updated the relevant sections of Table 31 to reflect that this entity should be reported in both the report submitting entity field and the broker field.

4.2 Reporting of action types at transaction and position level

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.

357. Many respondents asked for clarification about certain aspects related to position level reporting: i) if position reporting is optional, since in the examples it seems that all cleared trades are reported like this, ii) if counterparties will need to agree on which trades would be reported as a position level iii) if according to the tables described in the CP, reporting "Position Component" as an action type at transaction level is the previous step of reporting "New" as an action type and at position level, and iv) a CCP stated that position level reporting applies only if the CCP´s model supports it.

358. ESMA would like to emphasise that the counterparties are allowed to report **optionally** a single position-level STF when certain conditions, as described in the Section on "Reporting of CCP-cleared SFTs" of the CP, are met. Despite the optionality, bilaterally agreed SFTs cannot be replaced by a single trade, and therefore the trades would not fulfil those conditions.

359. ESMA highlights that when using position reporting, the risk is at position level. Individual trades are replaced by the position when the novation takes place after netting the individual trades, resulting in a new contract and a new UTI. However, a CCP´s model has to offer this possibility of reporting. Therefore, ESMA expects that counterparties (i.e.: CM and the CCP) agree/check in advance whether it is possible to report at a position level or not. If the position reporting is chosen, the original trades have to be firstly reported at transaction level and with "Position component" action type, since it is not permissible to

report only new trades at position level directly (position level is a supplement to trade level reporting for post-trade events).Then, the original trades have to be "Early Terminated" and the subsequent updates have to be applied only to the report of the position made at position level. ESMA recommends checking the sequence between action types in Section 4.8.3 of the Guidelines for the different types of messages, and also the workflow established in Section 5.2.1.3 of the Guidelines.

360. ESMA provides further clarifications in the Guidelines.

361. One respondent interpreted that, since the details of the counterparty were omitted in the two examples for the position component, there was no need to report the bilateral leg when the trade is cleared on the same day of the transaction. Clarifying further, SFTs which are not concluded on a trading venue but are cleared by a central counterparty even on the same day should be reported: the original trade, its early termination and the new SFT resulting from the clearing.

362. One respondent expressed that "Early Termination" should be only used when the counterparty is terminating its relationship with its client. ESMA points out that Early Termination is defined in the RTS on reporting for the termination of an open term SFT or an early termination of a fixed-term SFT, any other situation could not be reported under this action type.

363. Another respondent asked that, for those cases where the deals are internally closed and re-opened for technical reasons such as re-rating or substitution of collateral, if they are expected to use "Modification" as action type instead of "Early Termination". ESMA would like to point out that both business events were already included in Section 5.12 "Mapping business events to action types and levels" of the CP, and that it is not expected to use "Early Termination", but "Modification" and "Collateral Update" action types respectively.

364. A respondent asked for additional examples for cases including agent lender and tri-party agent where the action type is Collateral update. ESMA clarifies that the reporting would be the same as when a collateral update takes place by the entity itself but filling Field 14 of Table 1 (Counterparty Data) with the LEI of the tri-party agent identifier.

365. Other respondents demanded clarification about the action type to be used in the event that a counterparty undergoes a corporate action like a merger, acquisition or a takeover changing its LEI. ESMA included in the Guidelines a procedure of notification to the TR.

366. Other respondent understood that counterparties are required to submit two types of margin lending SFT reports. First, a modification related to the changes in the margin loan on a daily basis and second, a collateral update reporting the changes in the collateral. It was not entirely clear to the respondent how to report the Action Type for margin lending (Field 2.98 and Field 2.99) for the end of day position level of the SFT.

367. ESMA confirms the need to submit two reports in the event that the loan suffers a modification as well, since on the one hand it is expected that a daily collateral update for the collateral valuation and/or changes in collateral composition, if the valuation occurs on a daily basis (that is what usually happens in most of the cases) is reported. And on the other hand, it is expected the report for the details of the outstanding margin loan as they stand at the end of each day, where there is a net cash debit in base currency or where

there is a short market value. Thus, this means that updates to margin lending for loan data and its collateral are to be made on a daily basis unless the loan falls to zero

368. Regarding Field 2.99 (level of the trade), it is established in RTS 2019/356 that position level is not possible for Margin Lending, and this is also aligned with the Validation Rules. ESMA expects to receive all the Action types for Margin Lending except for "Valuation update" with the following specificities regarding business events:

   a. "Modification": i) If a margin loan goes to zero, with no termination date, and ii) If there are changes in the margin loan and/or the short market value.

   b. "Collateral Update": If there is a change in the relevant collateral. If it remains at zero, no report is expected.

369. A respondent required further clarification from ESMA on what actions are required when the maturity date of a term repo is the same as the Event Date and the trade ceases, whether it is necessary to report a collateral update for the valuation of the collateral on the maturity date.

370. ESMA established in the Table 5 of "Mapping business events to action types and levels" that if the maturity of the trade reaches naturally there is no reportable action. But since the collateral valuation is expected in an end of day report, collateral update would be received on that day. But finally, it should be noted that the last collateral update is expected to be submitted no later than T+1 for the last day on which the corresponding SFT(s) is outstanding. Therefore, after reaching the maturity date of the term SFT(s), the collateral updates should be submitted for that SFT(s) no later than T+1.

371. Finally, another respondent requested clarification in the event that deals undergo more than one modification/correction/valuation during the day. ESMA clarified the issue in paragraph 76 of Section 4.8.2 of the Guidelines.

372. ESMA clarified the differences between "Modification" and "Correction" in the Guidelines. Since a modification to an SFT comprises the reporting of the action types "Modification" and "Correction", in case there are several modifications and corrections along the same day, only one report at the end of the day should be submitted with action type "Modification", provided the modification has taken place. However, it is expected that reports are made with "Valuation" as an action type if there is a change in the value of the securities or commodities used in securities or commodities lending transaction, without the possibility of using "Modification".

4.3 Table 2 Loan data

4.3.1 Reporting of event date

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.

373. ESMA proposed in the CP that counterparties should populate the Field "Event date" as follows:

a. the conclusion of the SFT should be reported in relation to when the SFT was concluded, even if then it did not settle afterwards;

b. the modification of elements to the SFT, including the collateral data, should be reported as the date on which the modification takes place.

374. Counterparties should be mindful that the information reported with regards to a given event date should allow authorities to have a clear view on the exposures arising from a given (set of) SFTs as of the close of the day for which the SFT refers to.

375. The majority of the respondents asked for clarification with regard to the population of the Field "Event date". Many respondents raised the question of how back-dated changes are being reported based on the discrepancy between the validation rules and Action Type. The term "taken place" in the validation rules needed to be clarified.

376. One respondent raised the concern, that if the event date is considered in the creation of a "trade state" of a given trade, the validations applied by TRs to ensure the correct sequencing of events are nullified.

377. ESMA points out that action type processing and trade state should reflect the latest submission for a given trade made to the TR. This process is also applied by TRs under EMIR.

4.3.2 Reporting of cleared / non-cleared SFT

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.

378. ESMA proposed in the CP the following approach to report cleared SFT and non-cleared SFT.

a. Regarding Cleared SFTs open offer, the clearing takes place at the time of conclusion of the SFT. The Field 2.5 "Cleared" is populated with "true". Field 2.6 "Clearing timestamp" is equal to Field 2.12 "Execution time stamp". The Field 2.7 "CCP" is populated with the LEI of the CCP.

b. Regarding Cleared SFT in a novation model, the clearing takes place after the time of the conclusion of the SFT. The Field 2.2 "Report tracking number" should be populated with the prior UTI (that of the bilateral transaction in the case of CCP-cleared SFTs) but only to be reported by the CM and its client, not by the CCP). The Field 2.5 "Cleared" is populated with "true". The Field 2.7 "CCP" is populated with the LEI of the CCP.

c. Regarding CCP cleared SFT in DBV model, the clearing takes place after the time of conclusion of the SFT. The Field 2.5 "Cleared" is populated with "True". The Field 2.7 "CCP" is populated with the LEI of the CCP. The DBV mechanism enables market players to give and receive packages of securities as collateral against the creation of a cash payment for financing purposes.

d. Regarding non-cleared SFT, the Field 2.5 "Cleared" is populated with "false". The rest of the fields related to clearing are not populated. Execution timestamp is populated.

379. The vast majority of the respondents supported the approach proposed to report cleared SFT and non-cleared SFT.

380. However, some respondents asked for confirmation of their understanding of the reporting process and requested clarifications, especially on the report tracking number (RTN) requirements.

381. A number of respondents note that it would be complex to implement the proposed approach for SFT cleared by CCP on an open offer basis or cleared on the same day of the transaction. Respondents clearly understand that when the SFT is executed on a trading venue and cleared by CCP on the same day, the prior SFT is not reported. However, the RTN generated by the trading venue is required.

382. For cleared SFT in a novation model, respondents have clearly understood that cleared SFT has to be reported with a report tracking number which is the UTI of the bilateral trade, but they identified some technical obstacles around obtaining it.

383. Some respondents note that on the novation model, "execution timestamp" and "clearing timestamp" may be identical in certain cases due to specific procedures of trading venues and CCPs.

384. Regarding the case "CCP cleared SFT in DBV model", some respondents ask for further clarification about the scope of the "DBV model".

385. Following the analysis of the feedback, ESMA included additional clarifications to the Guidelines about Field 2.2 "Report tracking number" and the rationale of the reporting process.

386. Finally, ESMA is not taking into account the proposal made by one respondent to develop an "example of a report for a bilateral trade given up for clearing after T+1", for the following reason: "Intermediate give-ups and take-ups"[10] do not fall under the definition of SFTs as mentioned in Section 4.2.1.of the Guidelines.

4.3.3 Trading venue

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.

387. ESMA proposed in the CP the following approach to populate the Field 2.8 "Trading venue".

388. The Field "Trading venue" should be populated in accordance with the type of conclusion of the SFT. The counterparties should always use the segment MIC. In the event of SFT

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[10] 1. "Intermediate give-ups and take-ups ": "In many instances, there are transitory situations where there are give-ups and take-ups between different entities in the execution and clearing chain. In this respect and having regard to Article 2(2) of RTS on reporting, only the status after the final take-up has to be reported. Hence ESMA is of the view that all the intermediate transactions do not fall under the definition of SFT and therefore should not be reported under SFTR."

concluded on an automated trading system (ATS) or broker matching platform, the MIC of the platform should be populated. This field does not allow population with LEI.

   a. Regarding on-venue conclusion of SFT, when the SFT is concluded through a trading system such as an OTF, MTF or regulated market, as defined under MiFID II, then it should be reported with a MIC code. This includes ATS and registered brokers.

   b. Regarding off-venue conclusion of SFT which is then brought to the rules of a venue, it should be reported with the code "XOFF".

   c. Regarding bilateral off-venue conclusion of SFT, in case neither the above (a.) and (b.) hold true, i.e. the SFT was concluded bilaterally, then it would be reported with the code "XXXX".

389. The vast majority of the respondents supported the proposal.

390. Some respondents requested confirmation regarding the status of voice-brokers (OTFs) which are not considered part of the OTC market. As stated above (on-venue conclusion of SFT (a)), when an SFT is concluded through a trading system such as an OTF, it should be reported with a MIC code.

391. Some respondents request clarification regarding populating Field 2.8 in cases where an in-scope counterparty concludes an SFT on a third-country trading venue. The field should be populated with a segment MIC code for that third-country venue.

392. One respondent disagreed with the approach proposed in the case that an SFT is concluded off-venue but brought into the rules of the venue. The respondent proposed instead to populate the field with the segment MIC code of the trading venue on which the transactions have been carried out.

393. Finally, ESMA has considered the proposal made by one respondent to populate the field with the trading venue's segment MIC code in the case of an SFT is concluded off-venue but brought into the rules of the venue. However, ESMA does not agree with this approach that will not be included in the final Guidelines.

4.3.4 Master agreement section

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.

394. In the CP ESMA presented examples of reporting of master agreement fields in three different cases. Respondents were asked to raise remarks or questions concerning the reporting of master agreements.

395. Five respondents raised a potential issue with the Master agreement version field. The field is mandatory when Master agreement type field is populated with a value other than "BIAG", "CSDA" or "OTHR". It was stated that some master agreements do not work on a version basis. Therefore, the field was suggested to be made optional.

396. ESMA recognises the issue, however, making the field optional could have potentially detrimental effects on data quality. Therefore, ESMA has clarified in the Guidelines that

when master agreement version is not available, year of signing the agreement should be used.

397. Three respondents wished ESMA to clarify whether the Master agreement type "CSDA" (CSD bilateral agreement) was specifically aimed to be used with CSDs' fails-curing transactions. ESMA confirms that the CSD fails-curing transactions should be reported with Master agreement type "CSDA".

398. Two respondents asked whether the example of Other master agreement type "CCPClearingConditions" in Table 57 should be used as a standard text for all CCP rulebooks and agreements, or if they should use a more specific name for the agreements. ESMA confirms the latter, i.e. a realistic name of the respective CCP agreement or rulebook should be used. The example has been modified accordingly to avoid any confusion.

399. Finally, one respondent pointed out that the GMRA version 2017 used in Table 56 does not exist, as the most recent version is 2011. This error has been corrected in the Guidelines.

4.3.5 Conclusion and start of the transaction

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.

400. ESMA has included in the CP two examples illustrating reporting of a conclusion of an SFT – one immediate SFT (with a value date in two days following the execution) and one forward starting SFT. The feedback received with respect to these examples was overall supportive.

401. One respondent asked how "Execution Timestamp" should be populated for margin lending SFTs and suggested to populate it with the day on which the client (first) draws credit from the credit facility provided by the prime broker with a view to the purchase, sale, carrying and trading of securities. This has been addressed in Section 4.8 of the Guidelines on the timeliness of conclusion of SFT.

402. One respondent asked whether the Value Date specified in the future in these examples is the Requested Settlement Date. Another respondent suggested including an example showing how to report if the trade then temporarily fails to open on the expected "Value date (Start date)". ESMA took these suggestions into account and addressed them in the Guidelines.

403. Finally, ESMA has not considered a proposal to use the term "agreed settlement date" should be used instead of "value date", because the reportable data fields such as "value date" are specified in the RTS.

4.3.6 Term of the SFT

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.

404. ESMA described in the CP the approach for the reporting of the term of SFTs. SFTs can be fixed-term or open term.

405. The vast majority of the respondents suggested that Field 2.17 "Earliest call back date" should not be updated on a daily basis in the case of open repos, including open evergreens.

406. Some respondents have argued that in such cases there is no need for daily updates as the repo remains open and such reporting would cause vast volumes of unnecessary reports. Consequently, this would damage the data quality of the reporting. Therefore, it was suggested that Field 2.17 "Earliest call back date" should only apply to NEWT reports.

407. Additionally, two respondents underlined, that Field 2.17 cannot be applicable for extendable repos due to their nature.

408. One respondent suggested that Field 2.16 "Minimum notice period" should also cover fixed-term repos with a termination option.

409. One respondent suggested reporting the Field 2.16 in calendar days rather than in business days. Another respondent asked for additional explanations regarding the calendar to be used by the calculation of the minimum notice period.

410. Taking into consideration the feedback to the Field 2.17, ESMA has amended the Guidelines as follows:

   a. The field can be changed to optional and used, e.g., for puttable repos. The respective changes for reporting of the Field 2.17 are specified in the validation rules.

   b. Furthermore, ESMA confirms that this field already covers fixed-term repos with termination optionality.

   c. ESMA has changed the conditionality of the Field 2.16 "Minimum notice period" on repo to Conditionally Mandatory on action types "MODI" and "CORR" for both transaction level and position level reporting.

   d. ESMA moreover confirms that business days should be used in the calculation. Usually, there is a clear definition of the term "business day" in the SFT agreement and business days are normally defined based upon days on which banks and securities markets are open for business in certain places. The parties are required to specify the places by reference to which the definition of business day is to be construed.

411. ESMA is not taking into account the feedback to include Earliest call back date (Field 2.17) only to NEWT and POSC reports, as it goes against the reporting logic to have full reporting for action type MODI and CORR.

4.3.7 Termination optionality

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.

412. In the CP ESMA proposed to populate the Field 2.22 "Termination optionality". This field is closely linked with Field 2.21. Fixed-term repos can have optionality, i.e. evergreen (Table 64) or extendable (Table 65) or be without optionality, i.e. not applicable "NOAP" (Table 63). Open term repos can be evergreen (Table 64) or have no optionality (Table 63).

413. Most of the respondents supported the proposal.

414. One respondent requested to change the conditionality on Repo and SL to Mandatory on Action Types "MODI" and "CORR" for both Trade Level and Position Level reporting.

415. With NOAP, Evergreen and Extendible being the only three options one respondent felt that unclarity remains with regard to denoting the fact whether a deal is callable or not.

416. One respondent identified an inconsistency between what is defined in the CP and the current version of the XSD (DRAFT2auth.052.001.01). According to Section 6.2.2.8 of the CP, open term repos can be evergreen or have no optionality; however, the schema does not allow to select open-term and to populate Field 2.22 "Termination optionality", which, according to the Validation Rules is a mandatory field. Following the analysis of the feedback, ESMA is eliminating the inconsistency between the CP and the XSD, by updating the XSD.

417. ESMA has clarified how callable and puttable SFTs should be reported.

4.3.8 Collateral arrangements

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

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.

418. ESMA proposed in the CP two different options for the "General collateral indicator" (Field 2.18). The first option was based on whether the transaction is cash-driven or security-driven, while the second option relied on a more restrictive definition of "General Collateral", which would apply only in the context of GC facilities such as those run by CCPs.

419. A majority of respondents disagreed with the first option for two main reasons. The first one is that, under the RTS, the field only applies to the securities that are used as collateral and not the securities that are on loan. Directly connected to this, the second reason invoked was that the standard case in SLB context should be that Field 2.18 is populated with "GENE" (rather than "SPEC"), as the collateral taker cannot usually dictate the type of collateral it receives.

420. The second option received greater support by respondents, highlighting that it avoided the use of an arbitrary definition for general collateral and should, therefore, reduce the risk of inconsistencies. More specifically, GC trades in a bilateral context set-up do not draw from an explicit list of eligible collateral, making them very different from transactions based on, e.g., CCP-based GC baskets.

421. However, other respondents pointed to the risk of inconsistencies with the ECB's MMSR if adopting a more restrictive definition, while others argued that the reporting of GC as the base case would be preferable to leaving the field empty.

422. Taking into consideration this feedback, ESMA updated the Guidelines to clarify that the field only relates to the securities used as collateral. Moreover, while the use of a restrictive definition for GC appeared appropriate for some repos, SFTR also covers other SFT types, and a majority of respondents appeared to prefer a flexible approach.

423. One respondent also indicated that some GC trades will have specific securities allocated after the execution and become specific collateral trades immediately. ESMA has included a clarification on how this should be reported.

424. Finally, some respondents asked for confirmation whether triparty repos were always defined as GC, which ESMA understands under the approach outlined above should be the case.

4.3.9 Fixed or floating rate

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.

425. ESMA provided multiple examples of populated fixed and floating rate tables in the CP. The feedback received contained one primary query from 10 respondents.

426. Respondents required confirmation on whether ESMA requires daily rate update notification messages on floating rate trades. If so, they requested guidance on what action type to use.

427. Therefore, based on the feedback received, ESMA has provided the following clarifications:

   a. It is not required to provide daily update notification messages on floating rate trades. The information provided in the floating rate and spread fields captures all required information.

   b. How floating rates that are not included in the ITS on reporting should be reported.

   c. How the information that is provided on fixed and floating rate relates to the loan of the SFT.

   d. Fields 2.35 "Adjusted rate" and 2.36 "Rate date" only need to be populated for pre-agreed future rate changes captured as part of the conclusion of the transaction.

   e. No interest rate is expected to be provided for short market value.

4.3.10 Repo and BSB/SBB principal amounts

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.

428. ESMA presented an example of the reporting Repo and BSB/BSS principle amount fields in the CP. Respondents were required to raise any remarks or questions relating to the tables provided.

429. Respondents indicated that there are SFTs where the principal amount on the maturity date (Field 2.38) is not known in advance that ESMA should decide what information (if any) should be captured in Field 2.38. They requested clarity on how to report these types of SFTs

430. Following the analysis of the feedback provided, ESMA will update the Guidelines with reference to the validation rules.

4.3.11 Securities

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

431. ESMA proposed in the CP an approach for reporting security quality. Counterparties should agree first on the credit rating to be used as reference and corresponding credit quality step under CRR to be reported. In case of lack of agreement, counterparties should just report the lowest applicable credit quality step.

432. Almost all respondents disagreed with the proposal. The main issues levelled against this approach were the absence of official or golden source for credit quality and differences across CRAs; the confidentiality issues associated with discussing an internal assessment with a counterparty; the risk to disclose confidential information; and the risk of inconsistencies across transactions.

433. A small number of respondents supported reporting the lowest applicable credit quality step as the default option. However, the large majority rejected this approach.

434. Taking this feedback into account, ESMA decided to forego this approach and to leave it to market participants to report a value that reflects their internal assessment and what is on their books. However, this is likely to lead to a higher rate of reconciliation breaks.

435. Some respondents also asked for clarification on whether to use short-term vs long-term rating, and local vs foreign-currency-denominated ratings. The credit quality reported should as closely as possible mirror the characteristics of the security.

436. Finally, a respondent requested ESMA to provide the list of main index equities constituents. ESMA addressed this issue in Section 5.4.5.2 of the Guidelines.

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.

437. ESMA set out in the CP a basic approach for reporting bonds, main index equities, and other securities without maturity in SLB.

438. Responses to this question were mixed and touched on various issues. Most of the respondents that objected to the proposal argued against the reporting of main index equities, due to changing composition and cost of access to the information. A few others

argued against the cost of CFI code sourcing or to ask provisions when CFI is not available. These two questions were treated elsewhere (Q37 and Q72).

439. A few respondents also requested ESMA to clarify some of the tables provided as use cases. This was taken on board in the final Guidelines.

4.3.12 SFTs involving commodities – commodities lending

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.

440. ESMA asked for feedback on the approach to reporting SFTs involving commodities. The table showed an example of an electricity loan.

441. Seven out of nine respondents either showed support or stated they had no comment on the approach to reporting SFTs involving commodities. The other two respondents, both commodities trade associations, raised attention to various aspects of commodities SFT reporting. One respondent expressed that SFT reporting aligned as much as possible with existing regulatory reporting regimes and that relevant issues previously raised in the context of other reporting regimes should be considered. The other respondent repeated various issues they raised in Q4, Q5 and Q9.

442. Taking into consideration the received feedback, ESMA has clarified the scope of SFTs involving commodities in Section 4.2.6 of the Guidelines. ESMA has concluded there are no new specific relevant issues raised with the approach to reporting SFTs involving commodities.

443. After reviewing the CP internally, ESMA has decided to replace the example of an electricity loan with an oil loan. The oil loan better reflects the practical limitation that only storable commodities can be loaned.

444. ESMA has taken note of the generic comments about aligning SFT reporting with other regimes (e.g. REMIT / EMIR / MIFIR). However, ESMA notes that these are different reporting regimes with a different purpose and approach.

445. Furthermore, ESMA notes that no new specific relevant issues were raised with regard to the SFT reporting regime.

4.3.13 Cash rebate SLB

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.

446. ESMA asked for feedback on the approach to reporting SFTs involving cash rebate SLB. The table shows an example of a cash rebate SLB with a floating rebate rate based on EONIA index with a floating rebate rate reference time period of 7 days with an integer multiplier of the time period of 1 day.

447. All respondents agreed to the approach. Two respondents commented that two fields are not applicable to cash rebate SLB: Field 62 "Floating rebate rate payment frequency time

period" and Field 63 "Floating rebate rate payment frequency multiplier". One of the two respondents suggested using 1-month frequency for fields 62 and 63 in line with monthly billing periods.

448. Taking into consideration the received feedback, ESMA understands that the proposed approach carries approval, however, that Field 62 and 63 are in practice not applicable to cash rebate SLB.

449. It was pointed out to ESMA that cash rebate SLBs do not have a floating rebate rate payment frequency. Cash rebate SLBs are typically paid through monthly billing cycles.

450. Against this backdrop, the Guidelines have been redrafted accordingly. Please note that the example provided concerns a transaction that requires the population of Field 62 and 63.

4.3.14 Non-cash collateral SLB

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.

451. ESMA asked for feedback on the approach to reporting SFTs involving non-cash collateral SLB. The table shows an example of a non-cash collateral, fee-based SLB.

452. All twelve respondents agreed to the approach. A couple of respondents pointed out that the %-sign was missing in the example, and one respondent wondered if it is possible to differentiate percentage from other spread value. Two respondents mentioned the absence of cash pool SLB scenario with one requesting such an example. Finally, an example of an unsecured fee-based SLB scenario was requested.

453. Taking into consideration the received feedback, ESMA understands that the proposed approach for reporting non-cash collateral SLB carries approval. Considering that cash pool SLB and uncollateralised SLB both use the same reporting logic, the Guidelines will be amended, and the subsection will be renamed to "Fee-based SLB: Non-cash collateral SLB, Cash pool SLB and Uncollateralised SLB".

454. Following the receipt of the feedback, ESMA is including the following additions to the Guidelines:

    a. Cash pool SLBs are fee-based SLBs with cash collateral. The difference is only in the accepted collateral.

    b. Uncollateralised SLBs are also fee-based SLB without any form of collateral.

    c. Non-cash collateral SLBs, Cash pool SLBs and uncollateralised SLBs are all Fee-based SLBs. The reporting logic is identical.

455. Against this backdrop, the Guidelines have been redrafted accordingly.

456. ESMA is not taking into account feedback about the missing %-sign, because Paragraph 307 of Section 5.3.15 of the Guidelines already explicitly mentions that the field is populated without the percentage sign which is reserved for xml tags.

4.3.15 Margin loan amount and short market value

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.

457.   In the CP, ESMA set out a detailed approach to reporting margin lending and short market value, including different use cases.

458.   There were very few responses to this question, with no objection to the proposal.

459.   One respondent asked for clarification regarding the treatment of American Depository Receipts (ADR), and whether they should be considered as fungible instruments that can be used for netting purposes. Considering that short market value is reported as a net monetary value at portfolio level (rather than ISIN level), the treatment of ADRs for netting purposes should follow the same logic as with any other type of asset. The Guidelines have been updated accordingly.

460.   ESMA did not take into account a proposal of one resposndent to leave Field 70 blank when Field 69 is equal to 0.

4.4 Table 2 Collateral data

4.4.1 Collateralisation and cash collateral

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.

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.

461.   When collateralisation takes place against a collateral basket, the RTS on reporting requires that the counterparties report the identification of the relevant collateral basket. Furthermore, the RTS requires the entities to report the individual collateral components as soon as they become available and no later than the working day following the value date.

462.   ESMA outlined an approach to reporting collateralisation on a single-transaction basis, collateralisation on a net exposure basis, with or without a basket. In addition, ESMA explained how cash collateral should be reported.

463.   Around half of the respondents supported the approach for collateralisation on a net exposure basis. Those that objected to the proposal appeared to do so for a variety of reasons, without completely rejecting the approach.

464.   Most of the issues raised required some clarification by ESMA in its final Guidelines: about the validation rules; about the treatment of GC platform deals; and about the use cases presented in the CP. ESMA has sought to clarify all of these issues in the final Guidelines.

465.   Regarding cash collateral, a large majority of respondents supported the approach. One respondent asked for clarification regarding the reporting of cash pools used to cover initial

exposure or daily margining. The reporting of cash pools in this context should be in line with the reporting of cash pool (and more broadly cash-collateralised) SLB, or with the reporting of a collateral update due to variation margining where the collateral component is cash, as applicable.

4.4.2 Security collateral fields

4.4.2.1 Haircuts and margins

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

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

466. In the CP, ESMA proposed an approach for the reporting of collateral market value (Field 2.88) at fair value and before haircut deduction (i.e. the full amount of collateral given/taken), and for the reporting of haircut or margin (Field 2.89). For the latter, the proposal included formulas to be used for the calculation of haircut in the context of repos and SLB, as well as several use cases.

467. Regarding collateral market value, almost all of the respondents supported the proposal, which appears to be in line with market practices.

468. Regarding haircuts or margins, the views expressed were mixed. Some indicated that this was in line with market practices, but a small majority of respondents objected to the proposal. This was for three main reasons.

469. First, respondents indicated that in the context of SLB, the formula did not work as margins and haircuts should be accounted for in the collateral haircut field. Second, the formula included appeared to be the one used to calculate initial margins, rather than haircuts. Third, in the context of margin lending, respondents indicated that the determination of haircut may not be straightforward and required some degree of flexibility.

470. Additionally, one responded requested that the definition be kept in line with the reporting instructions under the ECB's money market statistical reporting (MMSR).

471. ESMA took the comments on board and adjusted the Guidelines. For haircuts relating to repos, the definition has been clarified and adjusted in line with MMSR instructions. The definition of the field in the context of SLB has also been clarified, with Field 2.89 now only intended to capture ISIN-level collateral haircuts, while margining requirements should not be included. Instead, this will be captured through the collateral market value, which may include any margin requirement and or haircut.

472. Some participants also requested clarifications regarding some of the use cases presented in this section and how to populate the fields, which have been addressed.

473. One respondent requested that the field should be made optional for prime brokerage clients as they rely on calculations from prime brokers for haircuts. However, the field

cannot be made optional for one of the two counterparties, and the reporting of haircuts is mandatory already in Level 1.

4.4.2.2   Collateral type and availability for collateral reuse

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

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

474. In the CP, ESMA explained how collateral type (Field 2.94) and availability for reuse (Field 2.95) should be populated. For collateral type, government debt securities ("GOVS") should be based on the Basel III standardised approach, while main index equities ("MEQU") should rely on the list of indices drawn under CRR. For collateral availability for reuse, ESMA proposed that reporting entities should only rely on the contractual ability to reuse, rather than operational or technical constraints.

475. A small majority of respondents disagreed with the proposal regarding collateral type. This was mainly due to the risk of inconsistencies in the split between supranationals/agency debt securities ("SUNS") and government debt securities, leading to potential reconciliation issues. Moreover, respondents argued against the proposal for main index equities (as already highlighted in the responses to Q37 and Q58), due to the cost and complexity of accessing equity index composition, asking instead for a golden source.

476. Regarding the definition of the categories, a precise categorisation already exists within the MiFID II/MiFIR framework for most of the securities that are traded in the EU and can be relied upon to avoid any risk of inconsistency.

477. Regarding collateral types, ESMA has set up under MiFID II a reference database, or "Financial Instruments Reference Data System" (FIRDS), which is publicly available on ESMA's website.[11] FIRDS includes all securities that are listed on EU trading venues and is updated on a daily basis reflecting the information received from trading venues. As such, this reference database is likely to cover a very large share of the securities used in SLB or as collateral in EU SFT markets.

478. For securities that are not included in the above-mentioned system, counterparties should strive to agree on the type of securities that are being used as collateral.

479. Regarding collateral availability: Almost all respondents agreed with the proposal, with only a few asking to clarify that "contractual" ability to reuse meant per the SFT Master Agreement rather than any other bilateral contracts that might govern the relationship. This clarification has been provided in the Guidelines, while the validation rule has remained unaltered.

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[11] Search fields can be used either to look for a specific ISIN or based on the instrument's full name. See:
https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds

4.4.2.3   Identification of security and LEI of issuer

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.

480. In the CP, ESMA set out a short explanation regarding the use of ISINs to identify securities and LEIs to identify the issuers.

481. A large majority of respondents objected to the proposal, highlighting the absence of LEIs for a large number of non-EU issuers. Respondents highlighted that this might have an impact on SFT volumes trades, the inability to hedge positions, the inability to cover short positions, and some transactions appearing undercollateralised due to the impossibility of reporting some securities or the risk that collateral updates with many securities might fail due to a single missing LEI.

482. Respondents also expressed concerns about the ability to force their counterparty to register an LEI, the inability of current systems to provide this information, and the ability of TRs to verify the correspondence between ISIN and LEI.

483. One respondent proposed as an alternative to relying on CUSIP for US entities that do not have an LEI.

484. The points about ISINs and LEI of the issuers are addressed in Section 4.18 of the Guidelines.

4.4.2.4   Plain vanilla bonds, perpetual bonds, and main index equities

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

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

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

485. In the CP, ESMA provided three examples on the reporting of plain-vanilla bonds, perpetual bonds, and main index equities.

486. While most respondents agreed with the proposal, there were a number of clarifications requested:

   a. Whether the currency of collateral nominal amount was mandatory for any security type.

   b. How to report details of the collateral securities when these were not available yet.

   c. How to deal with value date of the collateral in the context of repos.

   d. Whether the price per unit should be expressed as the dirty price.

487. These comments were taken into account and the Guidelines have been amended accordingly.

4.4.2.5 Variation margining

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.

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.

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.

488. To recall, Article 5(3) of the ITS on reporting provides that "The counterparty shall report those modified details as they stand at the end of each day until it reports the termination of the SFT, or it reports the SFT with action type "Error", or until the SFT reaches its maturity date, whichever is earlier." Hence ESMA proposed in the CP how the reporting of variation margining should be organised. Reporting-wise, this aspect is a complex one as it requires the correct representation to allow the supervision on a continuous basis of the adequate collateralisation of the SFTs.

489. ESMA included several examples regarding the reporting of collateral updates for individual SFTs and for netting set.

490. The vast majority of the respondents supported the proposals to facilitate the reporting of collateral exchanged between the counterparties as variation margining. However, many of them required clarifications on the scenarios provided and also requested guidance on additional business scenarios that were not covered by the Guidelines.

491. Taking into consideration the received feedback, ESMA has updated the Guidelines to present separately the variation margining at the level of each SFT from the variation margining when it is on a net exposure basis.

492. Moreover, following the receipt of the feedback, ESMA included the following additional clarifications and examples to the guidelines on reporting of variation margining.

   a. Reporting of variation margining against a collateral basket at transaction and net exposure level;

   b. Reporting of variation margining against a cash pool;

   c. Reporting of variation margining for SFTs collateralised initially at transaction basis with a subsequent collateralisation on a net basis;

   d. Reporting with a negative sign of collateral that is provided as variation margin on a net exposure basis;

e. Removal of the Field Value date from the examples related to repos, since it is applicable only for prepaid collateral. The treatment of prepaid collateral is explained separately.

f. Removal of the Counterparty side for Collateral updates;

g. Inclusion of additional elements in the scenarios to better represent the reporting of collateral updates;

h. Simplification of the examples with regards to haircuts, as they are explained in Section 5.4.5.1.

493. Against this backdrop, the Guidelines have been redrafted accordingly. A general update of the xml schemas to ensure alignment with the updated use cases has been undertaken too.

494. Finally, ESMA is not taking into account the following proposals made by respondents:

a. include a specific example for COLU message where the VM is against a collateral basket, as the ITS on reporting provides that the collateral components have to be reported as they stand at the end of the day.

b. the introduction of "Counterparty side" (Field 1.9) to the COLU messages for SLB trades where the collateral is being allocated on a net exposure basis, as this is reported with action type "NEWT" in Field 2.98.

4.4.3 Prepaid collateral

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

495. In the CP, ESMA explained how it envisaged that prepaid collateral should be reported, by relying on the value date of the collateral.

496. A majority of respondents agreed with the proposal, but some raised potential issues with the interpretation of the data. Namely, data users that compare the loan value date with the collateral value date may lead them to believe that transactions are undercollateralised.

497. Another issue raised concerned the duration of prepays. A counterparty may not prepay all of its trades with another counterparty, leading to a potential confusing picture when it comes to understanding the collateralisation of individual transactions. Moreover, the duration of prepays may vary, implying that it is not always possible to associate collateral with specific transactions using just the two value date fields.

498. Some respondents highlighted that prepaid collateral is not applicable in the context of repos and should, therefore, be made optional.

499. ESMA has taken note of these comments and has aimed to clarify the information related to prepaid collateral but has not made adjustments to the reporting of this field is it leaves more flexibility for entities to report the information related to their trades.

4.4.4 Portfolio of cleared transactions

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

500. ESMA asked for feedback on the approach to reporting portfolio code of cleared transactions. When reporting this field, the counterparties should ensure that they use the code consistently in their reports. If a code identifies a portfolio that collateralises transactions that also include derivatives, the counterparties should use the code used when reporting under EMIR.

501. Nine out of eleven respondents agreed to the approach. Two respondents requested additional clarification on the use of the portfolio code field. Firstly, paragraph 359 of the CP seems to suggest that the fixed value EMIRSFTRCODE1 needs to be used. Secondly, there is confusion whether both sides of the transaction need to report the same value. Thirdly, there is confusion if the portfolio code needs to be unique. Finally, one respondent used the opportunity to ask practical questions about reporting margin in a CCP-setup.

502. Taking into consideration the received feedback, ESMA understands that the proposed approach carries approval; however, further clarification is needed on the proper use of the portfolio code value.

503. ESMA is including the following additional clarifications to the Guidelines:

   a. Clarification on the permitted values for the portfolio code.

   b. Clarification on whether both sides to the transaction needs to report the same portfolio code.

   c. Clarification on whether the portfolio code value needs to be unique.

504. Against this backdrop, the Guidelines have been redrafted accordingly.

505. Finally, ESMA has already taken into account the various questions with regard to margin reporting in a CCP setup elsewhere in the Guidelines. There are no new questions that were not already covered.

4.5 Margin data

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.**

506. ESMA asked for feedback on the approach to reporting margin data. Margin information is applicable only to CCP-cleared SFTs. In the case shown in Table 102 of the CP, the entity uses the same portfolio for collateralisation as under EMIR. The reporting counterparty, Counterparty J, which is also a clearing member uses delegated reporting services provided by Counterparty D. It reports initial margin and variation margin posted to CCP O. The counterparty also reports excess collateral.

507. Three out of thirteen respondents fully supported the proposal. Many respondents pointed out a mistake in the table where the two counterparties were switched around. There were

several requests for clarifications predominantly from CCPs. It was pointed out that some CCPs do not have the concept of variation margin. It was asked if the variation margin, therefore, can be reported as 0 (zero). Other requests for clarification were: (i) can all cash margin collateral be reported in a single value in a single currency, (ii) what currency should be used for margin collateral, (iii) can margin be reported as an end-of-day aggregate and not on a delta basis, (iv) how to report pooled collateral where both derivatives and SFTs contribute to overall margin requirement, (v) confirm this applies to initial margin and variation margin in the same way, (vi) does margin need to be reported before or after haircut, (vii) confirm if IM is out of scope for reuse reporting, (viii) consider providing a definition of IM.

508. Taking into consideration the received feedback, ESMA understands that some CCPs do not use the concept of Variation Margin, although further clarification revealed there is a concept called Liquidation Margin. ESMA will also clarify some practical issues with regard to margin reporting.

509. Moreover, following the receipt of the feedback, ESMA is including the following additional clarifications to the Guidelines.

   a. One respondent mentioned some CCPs do not use the concept of Variation Margin. ESMA understands that there is a different concept called Liquidation Margin (LM) that does not involve the exchange of cash transfers. LM shares some similarities with Initial Margin (IM) and Variation Margin (VM). LM can lead to a reduction in IM but shares the daily margin adjustments of VM.

   b. ESMA clarifies that IM, VM and excess collateral are each reported in a single figure, composed of the end-of-day net (pre-haircut) value of all received/posted/pledged asset classes. Preferably, in the base currency used by the CCP.

510. Against this backdrop, the Guidelines have been redrafted accordingly.

511. Finally, ESMA repeats that pooled collateral where both derivatives and SFTs contribute to overall margin requirement, the same portfolio code (Field 3.7) should be used as when reporting under EMIR, e.g. EMIRSFTRCODE1. This is covered in Section 5.4.9 of the Guidelines. ESMA refers to Section 5.6.1 of the Guidelines on collateral reuse to remind that Initial margin that is isolated and immobilised should not be included in the collateral reuse report. ESMA does not deem it necessary to clarify the definition of Initial Margin further.

4.6 Reuse data, cash reinvestment and funding sources

4.6.1 Collateral reuse

Q79. Do you have any comments on the scope of the non-cash collateral reuse 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?

512. ESMA stated that the counterparties should use the FSB formula to provide an estimate of the amount of collateral they are re-using, based on the share of collateral they have received from SFTs compared with their own assets.

513. Secondly, ESMA stated that the collateral securities posted or received from other transactions (such as collateral for margining purposes in derivatives transactions) are out of scope. The components of the reuse formula should not be reported in the formula. Reporting entities should only provide the estimated reuse at ISIN level.

514. Furthermore, it was mentioned that pledged initial margins that are isolated and immobilized, and therefore not eligible for reuse, should not be included.

515. Collateral received, eligible for reuse captures:

    a. securities received as collateral in reverse repos and BSB;

    b. securities borrowed in securities borrowing transactions;

    c. securities received as collateral in securities lending transactions;

    d. securities received as additional collateral to meet variation margin requirements originating from SFTs.

516. In margin lending, collateral that cannot be transferred to the prime broker´s own account due to contractual limitations on rehypothecation should be excluded from the reuse formula.

517. Collateral posted captures:

    a. securities posted as collateral in repos and SBB;

    b. securities on loan in securities lending transactions;

    c. securities posted as collateral in securities borrowing transactions;

    d. securities posted as additional collateral to meet variation margin requirements originating from SFTs.

518. Transactions that are outside the SFTR scope, such as SFTs executed with an ESCB member, should be excluded from the reuse formula. CCPs should exclude from their reuse estimates the collateral securities that are transferred between clearing members as part of their central clearing activities. This concerns the "collateral received" and "Collateral reused". On the other hand, the collateral received as margin should be included in the estimates, and CCPs are expected to report any reuse that takes place as part of their other activities (such as treasury operations and any other type of facility or mechanism that CCPs might have in place)

519. The majority of the respondents did not support the proposal regarding the reporting of the estimated reuse. Though, when analysing the aspects that were brought against the proposal, it seems that the practical side of distinguishing between the own assets and the collateral received from counterparties (as ESMA mentioned in the CP) remains the problem. Many correspondents see additional problems regarding the delegation of reporting (and not having the information or receiving the information in a timely manner, especially from the NFCs) and ask for additional guidance.

520. Some respondents asked for more clarifications on the formula proposed for the calculation. In some cases, the formula could produce an error instead of a result.

521. Taking into consideration the received feedback, ESMA understands that more guidance regarding the use of the FSB formula (more examples), the reporting of reuse when no actual reuse has taken place or the reporting in case of delegation is needed as well as more information on how to report the re-usable collateral when it is no longer reused.

522. Example 1: If Bank ABC owns 500 in security A, receives a further 1,000 in security A as collateral from a reverse repo, and uses 600 of security A as collateral to borrow another security, the estimated reuse that should be reported by Bank ABC for security A is: [(1,000)/(1,000+500)]*600=400.

523. Example 2: If Bank ABC does not own any assets at all and executes a non-reportable SFT with an ESCB counterparty and has, on the other hand, a loan with a non-ESCB party (collateral posted: 100), the calculation may produce an error. As the collateral received for the non-reportable SFT is excluded, the formula would result in an error due to a "0" denominator. In such a case, the counterparty should indicate "0" in the Field "Estimated reuse of collateral".

524. Against this backdrop, the Guidelines have been redrafted accordingly. In addition, in section 4.9.6 ESMA has included detailed guidance on how the field event date should be populated for each and every report regarding reuse. Finally, ESMA is not taking into account the proposal made by one respondent regarding the reuse of non-cash collateral by UCITS Management Companies on behalf of regulated funds. The proposal that regulated funds should not fill in the field of estimated reuse, as they are not allowed to sell, reinvest or pledge non-cash collateral, will not be retained because for the NCAs it is a source of prudential supervisory information. Moreover, the definition used in the context of UCITS and in SFTR are not fully aligned, as the securities borrowed from SLB and subsequently posted (e.g. for SFT margining purposes) are in the scope of the estimated reuse of collateral under SFTR.

4.6.2 Cash collateral reinvestment

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

525. The collection of granular data on cash collateral reinvestment also follows FSB recommendations meant to address financial stability risks[12]. More specifically, the FSB set out minimum standards on cash collateral reinvestment to limit liquidity risks.

526. Agent lenders play a central role in EU SLB markets. One of the services they offer to their clients is to manage the cash that clients receive as collateral against securities loans. This cash may go into segregated omnibus accounts or into commingled account, in which case it is usually mixed with cash collateral from other clients.

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[12] FSB Policy framework for addressing shadow banking risks in securities lending and repos. http://www.fsb.org/wp-content/uploads/r_130829b.pdf

527. In the CP, ESMA specified the reasons why cash collateral reinvestment is included in the SFTR reporting and the types of risks that are monitored. Moreover, ESMA explained how cash collateral reinvestment should be calculated and reported in the different cases between reporting counterparty and the entity responsible for reporting.

528. Furthermore, ESMA is providing clarification on the following aspects:

    a. how the reinvestment rate should be calculated;

    b. cases in which cash collateral reinvestment is covered;

    c. which entities are covered;

    d. how the different action types should be reported in the case of any of the three subsets of data that are to be reported in Table 4 of the Annex;

    e. how the cash collateral reinvestment amount should be calculated.

529. ESMA has also corrected instances in the validation rules where there were misalignments between the relevant data elements to be reported by counterparties.

530. In addition, in section 4.9.6 ESMA has included detailed guidance on how the field event date should be populated for each and every report regarding reinvestment.

4.6.3 Funding sources

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.

531. In the CP, ESMA suggested a way to report information on funding sources. Only a few respondents addressed this section. The main comments referred to the usefulness of the data and the difficulties to obtain it at transaction level.

532. In this regard, ESMA restates that the information on funding sources should be reported similar to the information on reuse and reinvestment, i.e. at the level of the reporting counterparty and not at transaction level, except in cases where there might be more than one entity responsible for reporting.

5   Rejection feedback

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.

533. Under Article 1(3) RTS on data verification it is provided that "A TR shall reject an SFT report that does not comply with one of the requirements set out in paragraph 1 and assign to it one of the rejection categories set out in Table 2 of Annex I to this Regulation".

534. In the CP, ESMA presented the approach with regards to the implementation of the requirements related to the provision of rejection feedback, the entities to which it is provided and the general aspects around its treatment. Streamlining the treatment of

rejection feedback based on ISO 20022 xml messages is essential for enabling intensive data processing by TRs and counterparties.

535. The feedback received was generally supportive of this, and additionally, market participants indicated the need for clarification on some additional aspects with relation to the rejection feedback.

536. Following the feedback received, ESMA has thus amended the guidelines on rejection feedback to address the feedback relating to the following instances:

   a. Clarify that the validations referred to in Article 1(1)(k) are included in the SFTR Validation Rules and they will be applied by the TRs.

   b. Confirm that ESMA has incorporated error codes for the relevant validation breaks.

   c. Confirm that immediate feedback is provided as applicable to all the relevant entities that are onboarded.

   d. Confirm that the EoD feedback is provided electronically or through an interface to all the participants.

   e. Clarify how the specific rejection feedback pertaining to Authorization/permission of a report submitting entity as per Article 1(1)(c) will be provided by TRs. This implies that the validation of the authorisation for delegated reporting only applies at an onboarding level. As Article 1(c) of the RTS on data verification states that this check should take place as part of the verification of reports made to the TR and whilst the permissioning relationship can be established at onboarding, the authorisation to report should also be checked at a submission level and a TR should reject any submission failing this check with an appropriate feedback message.

   f. Clarify how transactions and file rejections are counted.

   g. Clarify that if there is a serious schema error and the transactions cannot be validated, this will be reported as one file rejection.

537. However, some other aspects related to the immediate rejection advice messages are subject to the ISO 20022 framework, hence cannot be fully adapted to the feedback received, e.g. more detailed identification of the report being rejected with data from the SFT report, such as some extra information e.g. UTI or the counterparty, other counterparty, master agreement.

6 Reconciliation feedback

Q83.   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.

538. Article 2 of RTS on data verification establishes the reconciliation process to be carried by TRs and the feedback that they provide to the reporting counterparties, entities responsible for reporting and report submitting entities, as applicable.

539. Following the performance of the reconciliation process as detailed in Article 2(2), the TRs will assign a reconciliation category to the records that are subject to reconciliation.

540. In the CP, ESMA presented the approach with regards to the implementation of the requirements related to provision of reconciliation feedback, the entities to which it is provided and the general aspects around its treatment. Streamlining the treatment of reconciliation feedback based on ISO 20022 xml messages is essential for enabling timely data processing by TRs and counterparties.

541. The feedback received was generally supportive of this and additionally market participants indicated the need for clarification on some additional aspects with relation to the rejection feedback.

542. Following the feedback received, ESMA has amended the guidelines on reconciliation feedback to address the feedback relating to the following instances:

   a. Clarification of the requirement to cease reconciliation 30 days following the maturity date or early termination of an SFT. Based on the amended action type guidance included in Section 4.8 of the Guidelines, no SFT can be revived, hence an SFT should be excluded from reconciliation in accordance with the conditions under Article 2(2)(h) of the RTS on data verification. Moreover, following the receipt and acceptance, following verification, of a message with action type "EROR", the TR should remove a given SFT from the reconciliation with immediate effect, i.e. from the immediately following reconciliation cycle.

   b. Clarification that the collateral is also subject to the reconciliation requirements; however, these messages differ from loan messages in that there are no maturity dates. For net exposure-based collateral this means that the date of the collateral is related to the date of the loan side of the SFT. Hence a TR should seek to reconcile this information until thirty days after the termination or maturity of the last loan that is included in the net exposure collateralisation.

   c. Confirmation that the requirements for reconciliation are included in Article 2 of RTS on data verification, the start dates for reconciliation are divided in two groups.

   d. Confirmation that the values for the fields "Reporting type" and "Reporting requirement for both counterparties" are both included in the ISO 20022 xml messages.

   e. Confirmation that the information on the reconciliation categories will relate to the individual SFTs, thus including the loan and collateral details of the SFT.

   f. Clarification that the collateral reconciliation status for net exposure collateral will be repeated for all SFTs included in the net-exposure collateralisation.

543. ESMA has not incorporated in the Guidelines the proposal from a respondent that suggested that where a counterparty chooses to start reporting before the mandatory reporting start date, errors and omissions should not be considered as breaches. While having a testing period for counterparties, e.g. receiving a reconciliation feedback as normal in order to identify and address any issues in their reporting logic, would be beneficial, it is not something that is foreseen by the regulation. Moreover, it is very costly for TRs to run several systems for performing data validation and data reconciliation

organised depending on whether the entity has a reporting obligation in place or not. ESMA has indicated in the Guidelines that any SFT report submitted to a TR will be subject to the same data validation and data reconciliation.

7 How to provide information to authorities

7.1 Timelines for setting up data access

Q84.   What other aspects need to be considered to make the process more efficient? Please elaborate on the reasons for your response?

544. Article 4 RTS on data access under SFTR specifies the set up of access to details of SFTs. Article 4(1) establishes the requirements with regards to the process to be followed, whereas Article 4(2) refers to the information that needs to be provided by an authority to for the TR to be able to set up the access to data.

545. In the CP, ESMA presented clarification with regards to the timelines for provision of access to SFT data by TRs. It was clarified that this should take place 30 days following the submission of a completed request from the authority to set up data access.

546. ESMA moreover asked market participants what additional clarifications might be needed to ensure that the data is provided on time to authorities.

547. Following the feedback received, ESMA has thus amended the guidelines on timelines for provision of data access relating to the following instances:

    a.   Clarification that the TRs should use the information provided by the authorities in the relevant form provided in the RTS on data access. The SFT data on branches and subsidiaries should be provided to the authorities also by taking into account the existing LEI relationship data.

    b.   Clarification that when providing access to data reported by counterparties under Article 4 of SFTR, the TRs should include in the activity and state files SFTs reported at transaction and at position level.

    c.   Clarification in the relevant section on action types (4.8), that the TRs should not accept messages with action type "ETRM" which has a termination date in the future.

    d.   Clarification similar to the existing EMIR Q&A that when there are maintenance windows, TRs might delay the provision of access to data, and this is particularly relevant for the provision of responses on non-working days.

    e.   Clarification on the reference to outstanding SFTs in Article 5(4)(a) of RTS on data access and how it interplays with the requirement for TRs to provide data. It is worth noting that an SFT is outstanding only if it has not matured, it is not terminated, errored or included in a CCP-cleared SFT reported at a position level.

    f.   Clarification on how the TRs should filter SFT data (i.e. which fields have to be used) as there is certain unclarity with letters (k), (n) and (o) of Article 4(2). The respondent expected ESMA to create a unique form for an authority accessing data to use to confirm to TRs what data they should be provided access to.

7.2 Operational arrangements for data access

Q85.   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?

548. In the CP, ESMA presented clarification with regards to the other practicalities related to the provision of access to SFT data by TRs.

549. ESMA asked market participants what additional clarifications might be needed to ensure that the data is provided on time to authorities.

550. Following the feedback received, ESMA has thus amended the guidelines on provision of data access relating to the following instances:

   a. Clarification that while the type of content of the ISO 20022 XML messages for state and activity is different, i.e. flow vs stock information, the XSD is substantially the same. This way the development costs for TRs and counterparties are reduced. The relevant trade activity messages are auth.052.001.01 (counterparty, loan and collateral), auth.070.001.01 (margin), auth.071.001.01 (collateral reuse). The relevant state messages are 079.001.01 (counterparty, loan and collateral), auth.085.001.01 (margin), auth.086.001.01 (collateral reuse). Moreover, the same templates are to be used when the TRs prepare the response to both recurrent queries and ad-hoc ones for loan and collateral data. The TRs are not required to provide access to margin and reuse data through ad-hoc queries, as there are no queryable fields for either of the two reports. In addition, margin and reuse data are reported only at the end-of-day state level.

   b. Clarification as to how the ad-hoc queries should be set-up by the TR and in particular if the query criteria specify whether the state of the queried SFT is outstanding or not outstanding and the time window for reporting, as indicated under Article 5(4)(c) of the RTS on data access.

   c. Clarification that the XSD has been updated to allow for the provision of reconciliation values for multiple collateral elements for both counterparties, ERR, report submitting entity and authorities.

   d. Clarification that the collateral reconciliation results should be reported only once for all trades that fall under the same master agreement type and net exposure of collateralization is TRUE.

   e. Update and clarification on the templates relating to (i) Reporting of Repo Collateral and BSB Collateral, (ii) Reporting of Margin Lending Collateral, (iii) Net Exposure Collateral Reporting. (iv) Multiple Collateral Assets

   f. Addition of an example with the voluntary delegation of reuse reporting

   g. Clarification that in the case of Inter TR Reconciliation, ESMA expects TRs to pair loans, then (i) reconcile the loans on the reconcilable loan fields and in parallel (ii) reconcile the collateral on the collateral reconcilable fields. The collateral thus will not be paired regardless of whether it is trade based collateral or net exposure collateral.

Only loans will be paired, and the collateral associated with the loans for both trade-based collateral or net exposure-based collateral will only be matched. The TRs will not need to pair collateral and in that case, if one side does not provide net exposure collateral then every collateral asset will be reported in the Reconciliation Results Status report under "not matched" and the Collateral Reconciliation Status will be "Not Reconciled".

h. Clarification on the frequency and maximum duration of the execution of a recurrent query and how the TRs should take it into account when providing access to authorities that are not using the ESMA's system.

551. ESMA has not incorporated in the Guidelines the proposal from a respondent that suggested a transitional approach, e.g. by excluding certain securities and to kick-off a smaller scope in the reporting obligations. The reason for this is that the reporting obligation is established in Article 33(2)(a) SFTR.

552. As required under Article 5(6) RTS on data verification, ESMA reminds TRs that the response files shall be compressed and encrypted by TRs prior to submission.

8 Cost-benefit analysis

ESMA's choices in the Guidelines are of pure technical nature and do not imply strategic decisions or policy choices.

ESMA's options are limited to the approach it took to drafting these Guidelines and the need to ensure clarity, consistency or reporting and uniformity of formats.

The main policy decisions have already been analysed and published by the European Commission under the primary legislation, i.e. Regulation (EU) No 201/2365 of the European Parliament and of the Council of 25 November 2015, as well as by ESMA when submitting the draft technical and implementing standards to the European Commission on 31 March 2017.[13]

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[13] https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-82_2017_sftr_final_report_and_cba.pdf