

ESMA
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Biella, 26.07.2019

Sella Group response to ESMA Consultation paper on the Guidelines for reporting under article 4 and 12 SFTR

Sella Group welcomes the opportunity to provide comments on the above mentioned Consultation paper. In particular the purpose of our Group is to seek further clarification on the perimeter of the reporting obligation under article 4 SFTR.

Responses to ESMA's Questions:

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

A1: The purpose of SFT Regulation is the surveillance of the risks of shadow banking activities *“such as high leverage and pro-cyclicality (...) The Regulation responds to the need to enhance the transparency of securities financing markets and thus of the financial system”* (Recital 5 and 7 of SFT Regulation).

The Consultation paper introduces the principle that retail client lending transactions are not reportable, because *“there is no obvious link between the reporting of loans to individual retail clients and the objectives of SFTR stated in the aforementioned Recital (7) of SFTR”*.

However, it's not clear the reason why the exemption for securities financing transactions involving retail clients seems to be applicable only to margin lending, and not to securities lending, buy-sell back, sell-buy back and repurchase transactions also.

At the same time the consultation paper seems to be self-contradictory, stating that *“an SFT is reportable when there are two counterparties to it, or where one of the parties to the SFT is an individual that is not an undertaking and the other is a counterparty as defined in SFTR”* (par. 51) but, at the same time, that repo (and reverse-repo) *“is a transaction concluded between two counterparties”* (par. 56). Paragraph 56, therefore, implies that only a repo concluded by two undertakings is reportable.

We suggest to clarify if margin and securities lending, buy-sell back, sell-buy back and repurchase transactions involving individual clients different from undertakings are out of scope.

It's worth appointing that, considering that the purpose of SFT Regulation is not investor protection, the same exemption should be applied to transactions involving individual professional clients according to MiFID 2 definitions (clients who may be treated as professionals on request). The same consideration should be applied to securities financing transactions different from margin lending. In fact retail securities financing transactions, such as security lending or buy-sell

back sell-buy back transactions are not “concluded under a specific master agreement”, which is one of the SFTs’ principal features (Consultation Paper, par. 17).

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.

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.

A4: See answer A1: the consultation paper seems to be self-contradictory, stating that “an SFT is reportable when there are two counterparties to it, or where one of the parties to the SFT is an individual that is not an undertaking and the other is a counterparty as defined in SFTR” (par. 51) but, at the same time, that repo (and reverse-repo) “is a transaction concluded between two counterparties” (par. 56). Paragraph 56, therefore, implies that only a repo concluded by two undertakings is reportable.

We suggest to clarify if repurchase transactions involving individual clients different from undertakings are out of scope.

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.

A5: See answer A1: it’s not clear the reason why the exemption for securities financing transactions involving retail clients seems to be applicable only to margin lending, and not to securities lending, buy-sell back, sell-buy back and repurchase transactions also.

We suggest to clarify if buy-sell back, sell-buy back transactions involving individual clients different from undertakings are out of scope.

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.

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.

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

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.

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

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.

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.

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.

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.

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.

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.

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.

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

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

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.

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

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

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.

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

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.

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

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.

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.

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.

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

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

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.

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.

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

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

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

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

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.

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.

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.

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.

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.

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.

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

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

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.

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

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

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

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

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

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

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.

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.

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.

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.

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

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

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

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

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

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

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

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.

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.

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.

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

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

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

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

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

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.

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.

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.

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

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.

Kind Regards

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