ESMA_QA_922

Submission Date
28/01/2022

Status: Answer Published

Additional Information

Level 1 Regulation
Securities Financing Transactions Regulation (SFTR) Regulation (EU) 2015/2365- MDP

Topic
Settlement fails

Subject Matter
Reporting of settlement fails

Question
In certain instances the reporting under Article 4 of SFTR is affected by events linked to the settlement of the respective SFT or of either of its legs. For this purpose, ‘settlement fail’ follows the definition included in Article 2(15) of Regulation 909/2014 and it means “the non-occurrence of settlement, or partial settlement of a securities transaction on the intended settlement date, due to a lack of securities or cash and regardless of the underlying cause”.

a) When is a settlement fail reportable?
b) How should a settlement fail on the closing leg be reported?
c) By when should a settlement fail be reported?
d) Is a settlement fail reportable, where the Counterparties have been unable to modify the maturity date of an SFT due to a failed settlement that takes place after the day following the maturity date (S+1)?
e) Contractually there is a difference between a settlement fail of the closing leg between securities borrowing and lending transaction and (reverse) repo transactions. Does this mean that the reporting of a settlement fail of the closing leg of a (reverse) repo transaction follows the contractual termination date?
f) How should a settlement fail on the closing leg of a CCP-cleared SFT be reported, where the settlement is on a net basis?

ESMA Answer

25-01-2022

Original language

[ESMA74-362-893 Q&As on SFTR Q&A 2]

Reporting of settlement fails[1]

a) A temporary settlement fail, that neither results in a termination of the SFT, nor in a modification of any of the reportable characteristics of the SFT, should not be reported as per paragraph 94 of the ESMA SFTR Reporting Guidelines. If the settlement fail results in an amendment to the transaction, then the amendment should be reported accordingly with the action type “MODI” as per paragraph 98 of the ESMA SFTR Reporting Guidelines.

b) Where on the day following the maturity date the counterparties become aware that the closing leg of the SFT has not been settled, they should send a report with action type “MODI” to amend the maturity date to the next day or other future day on which it is expected to settle, as per paragraph 115 of the ESMA SFTR Reporting Guidelines.

c) An amendment of the maturity date (S) would be possible only until the day following the maturity date (S+1). As from this date the SFT will no longer be outstanding, and it will not be possible to “reopen” it.

d) In case of a settlement fail that takes place after S+1 and (i) there is no possibility to update the maturity date or (ii) the SFT has been early terminated and there is no possibility to revert the early termination, the counterparties should report the remaining/outstanding SFT with a new UTI and specify accordingly the complete and accurate div of that SFT and in particular its maturity date. Special attention should be paid to the consistent reporting by the two counterparties. Notably, when either one or both counterparties do not report the modification on time, both counterparties would need to report the SFT with a new UTI agreed between them.

e) The reporting of settlement fails of the closing leg applies to all types of SFTs. Counterparties should apply paragraph 115 of the ESMA SFTR Reporting Guidelines in the broad scope of the reporting obligation under Art 4(1) SFTR, and it cannot be interpreted as covering only the case where the counterparties agree to amend the settlement date. The reporting of the settlement fail of the closing leg of a (reverse) repo transaction should be made by following the actual settlement date, not the contractual termination date.

f) The reporting of settlement fails of the closing leg of a CCP-cleared SFT, where the settlement is on a net basis, follows the same treatment as for all other SFTs as per paragraph 115 of the ESMA SFTR Reporting Guidelines to the extent that those settlement fails are attributable to individual SFTs. Settlement fails should only be reported if they can be attributed to individual SFTs.

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[1] The guidance provided in the SFTR Q&A is circumscribed to the reporting of SFTs and by no means precludes or pre-empts the reporting of settlement fails required under any EU legislation.