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| Response Form to the Consultation Paper  |
| Guidelines for reporting under Articles 4 and 12 SFTR |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **29 July 2019.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_RSFTR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_RSFTR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_RSFTR\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Position limits and position management in commodities derivatives”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation. In particular, responses are sought from financial and non-financial counterparties to securities financing transactions, tri-party agents, agent lenders, central counterparties (CCPs) and trade repositories (TRs), as well as from all the authorities having access to the TR data.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | BVI |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Germany |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_RSFTR\_1>

We1 welcome the opportunity to respond to the consultation on Guidelines for reporting under Articles 4 and 12 SFTR.

We embrace the initiative started by ESMA to provide further reporting guidelines ahead of the report-ing obligation. We strongly support the work started by ESMA to harmonize data content, format and standards on the basis of ISO 20022 for data collection and aggregation on securities financing trans-actions that are relevant for financial stability monitoring. The proposed data fields for securities financing transactions could be reported by German fund management companies to a trade repository (TR). German investment fund management companies do not currently use a CCP for SFTs.

1 BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI’s more than 100 members manage assets of some 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 22% in the EU Germany represents the largest fund market as well as the second fastest growing market in the EU. BVI’s ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

<ESMA\_COMMENT\_RSFTR\_1>

**Questions**

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

<ESMA\_QUESTION\_RSFTR\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_1>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_2>

German investment fund management companies (Kapitalverwaltungsgesellschaft – KVG) act on the behalf on the investment funds (“Sondervermögen”) which are established in accordance with contract law. Under the law while being recognized as a separate pool of assets the fund has not a board. Therefore the investment fund management company is the legal representative of the fund and is the contractual party to the SFT. Similar legal structures exist in other EU jurisdictions. Para 48 of the Consultation Paper is not precise as it refers only to the specific case of sub-funds without considering the base case of regulated investment funds (UCITS/AIF).

We encourage ESMA to align the SFTR reporting as much as possible with EMIR and therefore add in para 48 that investment funds should be considered as counterparties to a SFT regardless of their legal status. This is in line with the EMIR reporting obligation and would support the para 52 treatment of sub-funds.

<ESMA\_QUESTION\_RSFTR\_2>

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

<ESMA\_QUESTION\_RSFTR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_3>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_4>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_5>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_6>

No. Asset managers and their agents should have all relevant information at hand with respect to the lendable securities of the investment fund before concluding a SLB with the counterparty.

<ESMA\_QUESTION\_RSFTR\_6>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_7>

The termination of a SLB does not have any impact on the lending fee. The lending fee is initially agreed and remains applicable until the end of the transaction. Any transaction following the terminated one is subject to negotiations with a lending fee agreed to the new transaction. If the same ISIN will be lent to the same counterparty after the termination of the former transaction the new price is not influenced by the price concluded for the preceding transaction. Negotiating the lending fee of the new transaction will be impacted by the market, price volatility or the relevant volume offered. If a SLB is agreed but not settled and cancelled there is no cost evolving from that cancellation.

<ESMA\_QUESTION\_RSFTR\_7>

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

<ESMA\_QUESTION\_RSFTR\_8>

Our members do not have much experience with cash-driven SLB. The difference between SLB and Repos/BSB is that a counterparty pays for a lendable asset. In the case of a SLB, a counterparty is interested in a particular ISIN and pays for it, e.g. the lending fee. In the case of Repos/BSB, one counterparty is interested in liquidity and pays for liquidity/cash (repo fee/increased re-purchase price). It is difficult to imagine that a counterparty would like to provide liquidity and pays for providing such a liquidity. If such a case occurs the cash-driven SLB should be reported as an SLB. The reporting logic should not be changed due to the intention of a transaction. The SLB transaction should be reported as agreed and booked.

The ESMA Guidelines on ETFs and other UCITS (ESMA/2014/937)2 restrict the re-use of (non) cash collateral obtained by UCITS management companies on behalf of the regulated funds (UCITS). Such (non) cash collateral obtained by the regulated funds should not be sold, reinvested or pledged. We encourage ESMA to amend the Guidelines which create a not level playing field.

2 https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2014-0011-01-00\_en\_0.pdf

<ESMA\_QUESTION\_RSFTR\_8>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_9>

Our members are not engaged in SFTs involving commodities.

<ESMA\_QUESTION\_RSFTR\_9>

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

<ESMA\_QUESTION\_RSFTR\_10>

Our members are not engaged in SFTs involving energy.

<ESMA\_QUESTION\_RSFTR\_10>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_11>

We are not engaged in this kind of SFTs.

<ESMA\_QUESTION\_RSFTR\_11>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_12>

We encourage ESMA to evaluate if it should be sufficient to report only the cleared transaction at least if the clearing takes place promptly after the initial transaction. We do not see a qualitative difference compared to the give-up described in para 44. In the case of a give up the executed transaction switches automatically to the new counterparties where clearing takes place.

<ESMA\_QUESTION\_RSFTR\_12>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_13>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_14>

We agree with the proposal. AIFMs that are established in a third country but are authorized to provide services under the passporting regime in the EU should be obliged to report their SFTs. Otherwise EU based funds would be discriminated against.

<ESMA\_QUESTION\_RSFTR\_14>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_15>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_16>

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

<ESMA\_QUESTION\_RSFTR\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_17>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_18>

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

<ESMA\_QUESTION\_RSFTR\_19>

With respect to para 116 we agree that an SFT that was previously concluded and will never be com-pleted should be reported with the Action type “Error”. However it is not clear to us whether table 5 (p. 37) applies only to SFTs which have been concluded too late. ESMA needs to further clarify the point if the Action Type “Error” should be used in case of a previously concluded SFT that was subsequently cancelled or not completed.

<ESMA\_QUESTION\_RSFTR\_19>

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

<ESMA\_QUESTION\_RSFTR\_20>

We are of the view that the term “taken place” needs further clarification by ESMA. The contractual agreement, i.e. the contractually agreed Effective Date, should be decisive for the SFTR reporting of a modification. For example, a fee change or a partial return on the planned Effective Date should be interpreted as a "taken place" so that these modifications must be reported no later than the Effective Date+1. The term “Taken Place” should be interpreted as agreed and booked in respect to the SFT. The actual settlement should not have any influence on the reporting, unless the transaction has been changed or terminated as a result of the failed settlement. In this case, a MODI or ETRM would be reported accordingly.

The following examples illustrate the problem:

Trade Details:

Original Quantity = 100 Shares

Return Quantity = 20 Shares

Return Booked on 17 December 2018

Return Due to Settle on 21 December 2018

Settlement fail and therefore settles on the 23 December 2018

In this scenario a ‘MODI’ report would be sent to the TR on 18 Dec 2018 (at the latest t+1).

The fields will be populated as follows:

Reporting Option 1:

Field 2.03 Event Date = 21 December 2018 (effective date)

Field 2.46 Quantity or nominal amount = 80

However the current validation rules (VR) provided by ESMA requires for the field event date [2.3] the following conditions: The date populated in this field shall be:

a) prior or equal to the date part of the reporting timestamp

b) greater than or equal to the date part of the execution timestamp.

c) prior or equal to the value of the field maturity date

Reporting Option 1 would not in line with (a) as the event date = contractual settlement date/effective date > the reporting timestamp (t + 1 = 18 December 2018)

If “taken place'” means the agreed and booking date, a report of the modification to the TR will be sent on 18 Dec 2018 as follows:

Reporting Option 2:

Field 2.03 Event Date = 17 December 2018 (booking date)

Field 2.46 Quantity or nominal amount = 80

If ESMA intends not to change the validation rules, we would report the event date as the booking date of the modification and would interpret the booking date of the change as 'taken place'. In this scenario a ‘MODI’ report would be sent to the TR on 24 Dec 2018 (at the latest t+1)

Reporting Option 3:

Field 2.03 Event Date = 23 December 2018 (actual settlement)

Field 2.46 Quantity or nominal amount = 80

Therefore, we consider **three options for the reporting of the field event date** [2.3] and the reporting timeline:

• **Option 1:** Taken place = contractual effective date in field event date [2.3]: This means that ESMA must remove the validation for this field of [prior or equal to the date part of the reporting timestamp]

--> T = contractual settlement/effective date --> T+1 Reporting timeline = contractual settle-ment/effective date +1

• **Option 2:** Taken place = booking date in the field event date [2.3] as the change is agreed and booked on the 17 Dec; --> No adjustment required by ESMA -->T = booking date --> T+1 Reporting timeline = booking date +1

• **Option 3:** Taken place = actual settlement in field event date [2.3]: This means that ESMA must remove the validation for this field of [prior or equal to the date part of the reporting timestamp]

-->T = actual settlement date --> T+1 Reporting timeline = actual settlement date +1

Option 2 reflects the exposure and the confirmed obligations between the two counterparties by taking into account the effective date which is in line with the actual market conditions. However, ESMA pro-vides the following contradictive interpretation within para 67:

*“[...] Given that Article 4(1) of SFTR requires the reporting of conclusions, modification and termination of SFTs no later than the following working day, all SFTs that have been concluded should be reported. This includes all SFTs that were generated even though they might not be settled.*]

Therefore, we encourage ESMA to interpret “taken place” as contractually agreed and not as “the settlement takes place”.

<ESMA\_QUESTION\_RSFTR\_20>

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

<ESMA\_QUESTION\_RSFTR\_21>

ESMA should consider that collateral might be replaced by new collateral multiple times per day. A replacement does not lead to less collateral. SFTs with multiple collateral replacements per day en-hance the efficiency in the collateral market. ESMA should point out that only the end of day collateral received or posted should be reported.

<ESMA\_QUESTION\_RSFTR\_21>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_22>

ESMA needs to further clarify if the timely reporting of valuation, margin and reuse update should also take place on T+1 as it is the case for all other Action Types.

ESMA should also take into consideration that collateral might be replaced by new collateral repeatedly during the day. A replacement of collateral does not lead to less collateral. SFTs with multiple collateral replacements during the day reflect market movements similar to intra-day margining. However, requiring counterparties to report all replacements sets an incentive to avoid replacements which would not only be damaging for intraday margining and collateral allocation systems. ESMA should therefore determine that only the end of day collateral received or posted should be reported.

<ESMA\_QUESTION\_RSFTR\_22>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_23>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_24>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_25>

We support proposal A.

<ESMA\_QUESTION\_RSFTR\_25>

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

<ESMA\_QUESTION\_RSFTR\_26>

• **Sequence between action types for the different types of messages: Table 2 Termination/Early termination** **Correction: Business case: Cancellation of a full return**

A cancellation of a full return could lead to a reopening of the original SFT. According to ESMA only a CORR is allowed after an ETRM. In this case the cancellation and the re-opening of the SFT would lead to a CORR reporting. In this case, we think that the action type CORR for the reporting is not appropriate as CORR is defined by ESMA as a type to report incorrectly reported data.

Therefore, we propose to extend the validation of the action type Sequence MODI after an ETRM:

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

If our proposal will not be implemented ESMA should be aware that in this case it does not constitute a correction of incorrectly reported data for CORR, but rather the agreed cancellation of an initial closing.

The possibility to report the SFT as NEWT could not increase the complexity as the closing of the old transaction nor the opening of a new transaction under a new UTI would result in a settlement. It would be necessary to link the two transactions front-to-back. If ESMA intends not to create a new action type then further guidance should be provided.

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

We fear that the application of the Action Type “Error” could be used differently by the reporting enti-tiesSuch use cases have appeared during EMIR reporting whereby one counterparty reported the derivative transaction as ”Error” which thereafter prevented the other reporting entity from continuing to report with the same UTI.

We do not exactly know if the application of an error applies only to one- or to both reporting counter-parties. For example, counterparty A could have an error in the report e.g. it was incorrectly submitted for an entity not in scope but counterparty B could continue to report the UTI. We encourage ESMA to provide further guidance on the usage of the action type “Error”.

<ESMA\_QUESTION\_RSFTR\_26>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_27>

• **Table 5: Business events/Action Type: Counterparty default or settlement fail**

A counterparty default should not be combined with a business event of a settlement fail as both events trigger different operations. If a counterparty default, we agree that an ETRM is reported as SFTR Action Type. A settlement fail can result in different activities. If a fail occurs at an opening, the transaction can be cancelled completely if both reporting entities agree that the deal should no longer be executed. In this case we expect an EROR cancellation.

If the settlement of the opening occurs later, it will neither be cancelled nor re-booked. A reported message with action type ETRM would not be a correct illustration how the market works. The reporting entities wait until the SFT is settled and the value date/start date is adjusted based on this settlement.

We propose the following options for settlement fails:

• Settlement fails should not be reported: as soon as the SFT is really settled, the action type MODI/CORR should be reported.

We have created the following examples:

**1. When an opening settlement fails:**

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

Opening fails 🡪 trade is still open and the value date is adjusted once the trade is really settled. We suggest to report:

* NEWT (on trade date)
* MODI or CORR (on actual settlement date or s+1 latest)

Opening fails 🡪 Agreement between the counterparties that the deal shall be cancelled due to economic reasons. We suggest to report:

* NEWT (T+1 after the transaction has been agreed)
* EROR (T+1 after the cancellation date)

**2. If the settlement of a partial return fails:**

There are two scenarios:

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

We recommend to report:

* MODI (for the partial return, when it is booked, latest 1 day later)
* MODI or CORR (on actual settlement date or s+1 latest as the event date is adjusted)

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

We recommend to report:

* MODI (for the partial return, when it is booked, latest 1 day later)
* MODI (for the cancellation of the partial as this leads to a modification of the prior reported quantity)

3. If a full return of a settlement fails:

There are two scenarios:

a) Trade has been terminated and settles delayed.

We suggest to report:

* ETRM
* Once the deal is closed we would not report anything else as the trade is settled delayed. From the booking logic this deal will not be re-opened again, though the settlement is delayed.

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

We suggest to report:

* ETRM
* MODI (as the deal is modified from closed to opened)

The contractual settlement date is electronically booked. In order to correctly reflect the agreed value/ settlement date, this date is not altered following settlement fails. The contractually agreed date can be decisive for any indemnity payment due to delayed delivery. In contrast, the actual settlement date is added to the trade as additional information especially when it comes to a month’s end billing or any other payment.

We think that only changes in SLB resulting from any failed settlement should be reported (e.g. the cancellation of an agreed return due to failed settlement) but not the failed settlement itself as it does not change contractually agreed conditions. Reporting a MODI/CORR to adjust the value date or event date would not reflect the way how the booking system works.

**• Table 5: Business Event/Action Type Extension Repo**

The extension of a repo that is neither an evergreen nor an extendable should be reported as NEWT. This complies with both the accounting practices on the repo market and the ICMA interpretation: ICMA (P23) Roll-overs into new transactions would be reported as new transactions (Action Type = NEWT). There is no need to report the maturing repo being rolled over.

<ESMA\_QUESTION\_RSFTR\_27>

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

<ESMA\_QUESTION\_RSFTR\_28>

**• Table 5 New Business events/Action Type: Cancellation with Partial/Full return**

We suggest to add a new business events/action type in the case of a cancellation with a partial/full return:

• Cancellation of a partial return should be reported with MODI

• Cancellation of a full return should be reported with MODI or CORR

<ESMA\_QUESTION\_RSFTR\_28>

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

<ESMA\_QUESTION\_RSFTR\_29>

No.

<ESMA\_QUESTION\_RSFTR\_29>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_30>

Yes.

<ESMA\_QUESTION\_RSFTR\_30>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_31>

Yes.

<ESMA\_QUESTION\_RSFTR\_31>

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

<ESMA\_QUESTION\_RSFTR\_32>

This will depend on the interpretation for the term “haircut”. In Germany, the regulation for UCITS requires that securities which are lent to the counterparty should have a higher value (method to create an overcollateralization) as the value of collateral posted by the borrower (a real haircut which has been added to the German regulation as a further way to create an overcollateralization following ESMAs Guidelines on ETFs and other UCITS issues). If both approaches apply simultaneously, they are merged and expressed as a total haircut as IT systems of banks can typically only consider one of these approaches.

Amendments of the haircuts for assets posted as collateral by the borrower applies more often. The frequency can be describes as once every 2 or 3 years and considers aspects in respect to the liquidity and volatility of those assets. The haircut policy applied by the ECB is also used. In this respect the frequency depends on how the ECB action.

A discount does never take place in practise. An add-on is to be requested by the fund management company if a significant development in the creditworthiness of the borrower takes place. The additional collateral requirement is added to the value of the securities lent and would be considered within the IT Bank system as the “total haircut” of the borrower. German Asset Managers have requested such add-ons.

<ESMA\_QUESTION\_RSFTR\_32>

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

<ESMA\_QUESTION\_RSFTR\_33>

No. The final price should not include such collateral related information if ESMA refers for instance to the lending fee. We recommend ESMA to further evaluate on the issue and taking also into account our answer to question 32.

<ESMA\_QUESTION\_RSFTR\_33>

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

<ESMA\_QUESTION\_RSFTR\_34>

**• Para 153: Market Value in Loan Value CCY**

Generally, we agree with the proposed approach. However, ESMA has not amended the CCY field contrary to the proposal by some trade associations. This means that market value must be converted to the Loan CCY. We propose to increase the tolerance limit to 0.0005%. Not only price differences resulting from different sources and cut off time but also differences in the FX rates for conversion of the market price into loan CCY can lead to larger differences in the reporting of the two counterparties.

<ESMA\_QUESTION\_RSFTR\_34>

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

<ESMA\_QUESTION\_RSFTR\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_35>

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

<ESMA\_QUESTION\_RSFTR\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_36>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_37>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_38>

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

<ESMA\_QUESTION\_RSFTR\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_39>

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

<ESMA\_QUESTION\_RSFTR\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_40>

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

<ESMA\_QUESTION\_RSFTR\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_41>

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

<ESMA\_QUESTION\_RSFTR\_42>

We do not agree with the proposed approach. The reporting obligation for investment fund manage-ment companies will start at a later date (11 October 2020) compared to credit institutions and MiFID firms (April 2020). Base d on the wording of para 187 we fear that asset managers could be obliged to provide the relevant information to the reporting counterparties earlier than required by the regulation. Therefore, we encourage ESMA to discard para 187. Counterparties may still agree on the exchange of information on a voluntary basis.

<ESMA\_QUESTION\_RSFTR\_42>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_43>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_44>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_45>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_46>

Please consider our answer to question 20.

<ESMA\_QUESTION\_RSFTR\_46>

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

<ESMA\_QUESTION\_RSFTR\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_47>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_48>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_49>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_50>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_51>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_52>

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

<ESMA\_QUESTION\_RSFTR\_53>

Delegated regulation 2019/356 specifies the definition for the codes “GENE” and “SPEC” as follows:

*The code ‘GENE’ shall be specified for an SFT which is subject to a general collateral arrangement. A gen-eral collateral arrangement specifies a collateral arrangement for a transaction in which the collateral giver may choose the security to be provided as collateral amongst a relatively wide range of securities satisfying predefined criteria. The code ‘SPEC’ shall be specified for an SFT which is subject to a specific collateral arrangement. A specific collateral arrangement specifies a collateral arrangement for a transaction in which the collateral taker requests a specific International Securities Identification Number (‘ISIN’) to be provided by the collateral provider.*

In our opinion, the above definition also reflects our understanding of GENE and SPEC as it corre-sponds to the general market practice. As a collateral matrix is agreed for both repos and SLB and the collateral is from a "range of securities that meet pre-defined criteria", we will always report "GENE" according to this definition for repos and SLB.

Therefore, we do not support option 1(Default Repo = GENE, Default SLB = SPEC). We support Op-tion 2 (para 265: Option 2: GENE, if GC or Tri-Party, if not SPEC for certain transactions, then BLANK). However, we believe that a GENE reporting is better than leaving the field blank.

<ESMA\_QUESTION\_RSFTR\_53>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_54>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_55>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_56>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_56>

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

<ESMA\_QUESTION\_RSFTR\_57>

Default option should be (b) as an agreement on credit rating references with the counterparty might not be possible.

<ESMA\_QUESTION\_RSFTR\_57>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_58>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_58>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_59>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_60>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_61>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_62>

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

<ESMA\_QUESTION\_RSFTR\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_63>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_64>

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

<ESMA\_QUESTION\_RSFTR\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_65>

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

<ESMA\_QUESTION\_RSFTR\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_66>

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

<ESMA\_QUESTION\_RSFTR\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_67>

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

<ESMA\_QUESTION\_RSFTR\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_68>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_69>

We strongly agree with the approach that the reporting entities should ensure that there is a corre-spondence between the ISIN and the LEI of the Issuer to be reported to a TR. However, we know that currently not all issuers have a valid LEI in place. We presume that over the time -as envisaged with the introduction of the EMIR/MiFIR reporting obligation - all relevant Issuers will obtain and keep a valid LEI.

Therefore, we encourage ESMA to recommends to an all market participants to contact the relevant issuers without a valid LEI with the request to obtain the identification code before the reporting obligation kicks in.

<ESMA\_QUESTION\_RSFTR\_69>

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

<ESMA\_QUESTION\_RSFTR\_70>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_70>

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

<ESMA\_QUESTION\_RSFTR\_71>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_71>

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

<ESMA\_QUESTION\_RSFTR\_72>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_72>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_73>

Yes, we agree the approach. However, we assume that the example in table 97 includes an error as the quantity/nominal of the collateral and the collateral price changed but the market value of the collateral did not change. According to our understanding the market value of collateral should be 10.199.990.000,00 instead of the reported 102.000.000.

<ESMA\_QUESTION\_RSFTR\_73>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_74>

Yes, we agree the approach. However, we assume that the example in table 98 includes an error as the quantity/nominal of collateral and the collateral price changed but the Market value of the collateral did not change. According to our understanding the market value of collateral should be 10.199.990.000,00 instead of the reported 102.000.000.

<ESMA\_QUESTION\_RSFTR\_74>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_75>

No. The example shows, that the change of quantity is reported instead of the final quantity which is still posted against the loan. The reduction of the French bond should not be reported as -2000000 in collateral quantities (i.e. not the delta) as this does not reflect the market practice. The remaining quantity of that ISIN posted as collateral needs to be reported as this is the value on which the collateral calculation is based on.

<ESMA\_QUESTION\_RSFTR\_75>

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

<ESMA\_QUESTION\_RSFTR\_76>

We encourage ESMA to explain and clarify the different description and interpretation of field (2) 3 Event Date and the contradictory wording in para 358. ESMA needs to confirm if the event type with the data field “Event date” is to be filled with the date of the collateral information received or with the date of the actual settlement.

<ESMA\_QUESTION\_RSFTR\_76>

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

<ESMA\_QUESTION\_RSFTR\_77>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_77>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_78>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_78>

1. : 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?

<ESMA\_QUESTION\_RSFTR\_79>

The ESMA Guidelines on ETFs and other UCITS (ESMA/2014/937)3 restrict the re-use of non-cash collateral obtained by UCITS management companies on behalf of the regulated funds (UCITS). Such non-cash collateral obtained by the regulated funds should not be sold, reinvested or pledged.

Therefore, ESMA should confirm, that for table 4 the re-use report is only to be submitted, when securities as stated [*The intuition behind the FSB formula is that entities should provide an estimate of the amount of collateral they are re-using…*] are re-used. The collateral is transferred as TTCA, so available for re-use under the definition of title transfer. Asset manager should not report the re-use report as collateral posted and the re-use formula should always be zero.

3 https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2014-0011-01-00\_en\_0.pdf

<ESMA\_QUESTION\_RSFTR\_79>

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

<ESMA\_QUESTION\_RSFTR\_80>

In order to avoid settlement fails, tri-party agents offer for all open trades (after a pre-defined cut off time) a collateralization with cash. Collateral providers are charged for such cash collateral “service” provided by the TriParty Agent’s. Technically it is an overnight credit of a Tri-Party Agent to the collateral provider. Usually the credit will be closed on the next morning will not be repeated if sufficient securities as collateral are available by the end of the day. The Collateral Taker does not receive any interest on the cash collateral as this is only a short-term coverage for security collateral.

We recommend ESMA to confirm that this practice is not interpreted as “cash re-investment” and therefore no re-use report must be submitted for an overnight cash credit received by the lender as collateral contribution of the borrower.

<ESMA\_QUESTION\_RSFTR\_80>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_81>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_81>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_82>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_82>

1. : 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.

<ESMA\_QUESTION\_RSFTR\_83>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_83>

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

<ESMA\_QUESTION\_RSFTR\_84>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_84>

1. : 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?

<ESMA\_QUESTION\_RSFTR\_85>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTR\_85>