Questions and Answers

On SFTR data reporting

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Acronyms and definitions used

SFTR	Securities Financing Transactions Regulation - 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
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories
ESMA	The European Markets and Securities Authority
LEI	ISO 17442 Legal Entity Identifier
GLEIF	Global Legal Entity Identifier Foundation
ITS	Implementing Technical Standards
RTS	Regulatory Technical Standard
MiFID II	Markets in Financial Instruments Directive (recast) – Directive 2014/65/EU of the European Parliament and of the Council
MiFIR	Markets in Financial Instruments Regulation – Regulation 600/2014 of the European Parliament and of the Council
NCA	National Competent Authority
Q&A	Question and answer
RTS	Regulatory Technical Standards
BSB	Buy-sell back transaction
SBB	Sell-buy back transaction
ML	Margin lending

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CFI code	Classification of Financial Instruments code
CM	Clearing Member
CCP	Central Counterparty
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

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	1	Frequency of reports	SFTR Article 4	XX/XX/20XX
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	3	Reporting of repos initially colletaralised on a per transaction basis and subsequently on a net exposure basis	SFTR Article 4	XX/XX/20XX
	4	Reporting of trading venue for cleared and non-cleared SFTs	SFTR Article 4	XX/XX/20XX
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1 Introduction

Background

The final legislative text of Regulation (EU) No 2015/2365[1] (SFTR) were approved by the European Parliament on 29 October 2015 and by the European Council on 16 November 2015. The two texts were published in the Official Journal on 23 December 2015 and entered into force on the twentieth day following this publication – i.e. 12 January 2016.

Many of the obligations under SFTR needed to be further specified in the regulatory and implementing technical standards developed by the European Securities and Markets Authority (ESMA). These were adopted by the European Commission on 13 December 2018 and were published in the Official Journal on 22 March 2019. The technical standards entered into force on 13 April 2019.

The SFTR framework is made up of the following EU legislation:

a) 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;

b) Commission Delegated Regulation (EU) 2019/359 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 the application for registration and extension of registration as a trade repository;

c) 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;

d) Commission Implementing Regulation (EU) 2019/364 of 13 December 2018 laying down implementing technical standards with regard to the format of applications for

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[1] 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.

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registration and extension of registration of trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council;

e) 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;

f) Commission Implementing Regulation (EU) 2019/365 of 13 December 2018 laying down implementing technical standards with regard to the procedures and forms for exchange of information on sanctions, measures and investigations in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council;

g) Commission Delegated Regulation (EU) 2019/360 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories;

h) 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;

i) Commission Delegated Regulation (EU) 2019/463 of 30 January 2019 amending Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to the list of exempted entities;

In view of ESMA's statutory role to build a common supervisory culture by promoting common supervisory approaches and practices, ESMA has adopted this Q&As document which relates to the consistent application of the SFTR data reporting obligation. The first version of this document was published on 5 November 2020, subsequent updates will be published on a regular basis. This document is expected to be updated and expanded as and when appropriate.

Purpose

The purpose of this document is to promote common supervisory approaches and practices in the application of SFTR in relation to regulatory data reporting topics. It provides responses to

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questions posed by the general public, market participants and competent authorities in relation to the practical application of SFTR.

The content of this document is aimed at competent authorities, entities and market infrastructures by providing clarity on the application of the SFTR requirements.

The content of this document is not exhaustive, and it does not constitute new policy.

Status

The question and answer (Q&A) mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 16b of the ESMA Regulation[2].

Due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if Q&As are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.

Where the question received requires interpretation of Union law, ESMA forwards the question to the European Commission. Replies from the Commission will be published on ESMA's website and included in Q&A documents, together with the explicit mention that the answer was provided by the Commission.

ESMA will periodically review these Q&As on a regular basis to update them where required and to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

Questions and answers

This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.

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2 Questions and Answers on SFTR data reporting

Question 1 [Published on 6 November 2020]

Frequency of reports

a) *How should a "working day" be defined for the purpose of determining the deadline for reporting?*

b) *How should the counterparties proceed if they follow different calendars?*

c) *How should the counterparties proceed if they are located in different time zones?*

Answer 1

a) Counterparties should follow their local time to determine the day on which the transaction was concluded, modified or terminated. Branches of third country counterparties should follow the local time of the Member State from which they operate. The deadline for reporting is the working day following that day. The point in time which serves as a starting point to calculate the reporting deadline is the date of conclusion, modification or termination of the transaction, irrespective of the execution process. Therefore, if a transaction is concluded, modified or terminated on date T, the reference day to start calculating the reporting deadline is T, as opposed to the date on which the counterparties start to exchange electronic information related to the conclusion, modification or termination of the transactions.

The determination of the deadline for reporting in the local time does not affect the way in which the relevant dates and times (such as execution timestamp) are reported to the TRs. The time convention for reporting is defined in the Commission Implementing Regulation (EU) 2019/363 ITS as UTC (Coordinated Universal Time). The GMT (Greenwich Mean Time) was not defined as a time convention as it refers to a time zone and not to a time standard.

b) As regards to the calendar, counterparties and branches of third country counterparties should follow the relevant calendar of the Member State from which they operate to determine whether a given day is a working day or holiday.

c) This guidance applies also when the two counterparties (or the branches thereof) to the same SFT follow different calendars and/or are located in different time zones, meaning that each counterparty should follow its own local calendar and use the local time to determine the deadline for reporting.

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Question 2 [Published on 6 November 2020]

Reporting of settlement fails

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) *Contractually there is a difference between a settlement failure 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?*

e) *How should a settlement fail on the closing leg of a CCP-cleared SFT be reported, where the settlement is on a net basis?*

Answer 2

a) A temporary settlement failure, 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 failure 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) 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.

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e) 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.

Question 3 [Published on 6 November 2020]

Reporting of repos initially collateralised on a transaction basis and subsequently on a net exposure basis

a) *How should field 2.73 (Collateralisation of net exposure) be reported for repos initially collateralised on a transaction basis whose variation margin is handled by VM collateral pools?*

b) *How should the collateral and the VM on a net exposure basis be reported, since the latter cannot be allocated to the transaction?*

Answer 3

a) If a repo transaction initially collateralised on a transaction basis is also part of VM collateral pools on a net exposure basis, field 2.73 (Collateralisation of net exposure) should be reported as "TRUE" from the onset. Since netting takes place at the level of the master agreement, the transaction is logically part of the netting set. "FALSE" is reserved for repo transactions exclusively collateralised on a transaction basis.

b) The counterparty should report with action type "COLU" (i) the transaction-based collateral for each UTI and in addition (ii) the net exposure collateral applicable to all the SFTs in the netting set without the UTI.

Question 4 [Published on 6 November 2020]

Reporting of trading venue for cleared and non-cleared SFTs

a) *How should the field 2.8 "Trading venue" be reported for SFTs?*

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b) *Can an SFT concluded bilaterally and cleared by a CCP on the same day be reported in accordance with Article 2(2) of CDR (EU) 2019/356?*

Answer 4

a) Trading venue is defined under Article 4(24) of MiFID II as a regulated market, an MTF or an OTF. Counterparties therefore should report in the field 2.8 "Trading venue" the segment MIC of the trading venue for SFTs concluded on regulated markets, MTFs and OTFs, XOFF for SFTs concluded off-venue for SFTs that are admitted to trading on a venue and XXXX in the rest of the cases, including an execution through a systematic internaliser (SI).

b) No. SFTs concluded bilaterally (i.e. not on a trading venue, where trading venue should be understood as defined under MiFID) and cleared by a CCP should be reported pursuant to Article 2(1) of CDR (EU) 2019/356.

Question 5 [Published on 6 November 2020]

Reporting of zero collateral for margin lending

How should zero collateral be reported for margin lending?

Answer 5

In accordance with Article 5(2) of CIR (EU) 2019/363, counterparties should report the relevant collateral components of a margin loan as long as there is an outstanding exposure. Currently the technical standards do not allow for reporting of cash collateral for margin loans, therefore the counterparties cannot report for margin lending zero collateral in line with section 5.4.4 of the ESMA SFTR Reporting Guidelines. Counterparties should use the ISIN EU000A1G0EB6 (European Financial Stability Facility) as an agreed default value in field 2.78 (Identification of a security used as collateral) to report zero collateral for margin loans.

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