

## ESMA CONSULTATION PAPER GUIDELINES FOR REPORTING UNDER ARTICLES 4 AND 12 SFTR

### AMAFI contribution

**Association française des marchés financiers (AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AMAFI welcomes ESMA's consultation paper on Guidelines for reporting under Articles 4 and 12 SFTR (hereafter the CP).

Indeed, SFTR constitutes a huge technical and operational challenge for the industry, Trade Repositories (TR) and ESMA in an area where, contrary to the cash or derivatives markets, automation of the process is yet to be achieved. Even if there is some progress to be expected before the entry into force of the regulation, the challenges associated with the reconciliation of different data elements must not be underestimated.

In this context, AMAFI deeply regrets that ESMA's proposal did not include a reduction of the matching fields, mainly those concerning reference data. Moreover, it seems that it will be difficult to match some fields, such as the market value of collateral. AMAFI believes it would be very helpful if ESMA could provide the industry with golden source or consider setting more reasonable margins.

Therefore, it is of the utmost importance that ESMA provides the industry with clear Guidelines with limited room for interpretation. Otherwise, reconciliation of many SFTs between two counterparties will be difficult to achieve, despite the processes being implemented by the industry.

Regarding the technical questions raised in the CP, AMAFI supports the joint contribution by ICMA and ISLA, and will not provide its own response, given that several AMAFI members brought their contributions to the joint response by ICMA and ISLA. However, AMAFI would like, in the general comments below, to stress some critical issues that should be addressed by ESMA before issuing its final Guidelines in order to limit (i) the number of mismatched trades (breaks) (ii) the number of rejected trades by TR.

It must be noted that the general comments do not specifically raise issues posed by the CP only but also level 2 measures that have already been endorsed by the European Commission (EU). AMAFI believes there is a need either to change some level 2 provisions or to specify in the Guidelines that some transitional rules are to be put in place before the full application of SFTR. Those topics need further discussion between ESMA and the industry, and AMAFI would be more than happy to take part in it.

## GENERAL COMMENTS: CRITICAL ISSUES

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### LEI of issuers and CFI and ISIN codes

According to various analyses (ISLA, Clearstream...), numerous securities are still used as collateral in SFTs that do not have a LEI. Investment firms have no power to force issuers to get such a LEI before the entry into force of SFTR (the situation was different before the implementation of MiFIR because the requested LEI identification concerned clients for which awareness campaigns were possible).

If field 2.93 is mandatory, it would lead to a significant number of rejections by TR at the expense of a sound and comprehensive vision of SFTs by ESMA and the various National Competent Authorities (NCAs)

In this context AMAFI believes that a transitory solution should be discussed with the industry. At least, until the LEI coverage is more generalised, the field should be optional and not mandatory.

Furthermore, AMAFI believes that large campaign should be conducted to raise awareness among all the actors involved (including trade associations), in order to identify all the instruments not matched with a LEI and inform market participants on a wide scale.

These conclusions also cover the CFI codes which are not always available. In this area, there is also a need for some flexibility in order to avoid rejections. It must finally be noted that the same also applies to ISIN codes.

### Tolerance limits

AMAFI considers that the tolerance limits, especially those related to numerical value fields or percentage values need to be increased in order to improve the matching rate, at list during a certain period after the entry into force of the regulation. The tolerance limits could be expressed in euros, for instance 100 euros. This applies mainly to collateral valuation and calls for ESMA to provide the industry with golden source as stated above.

### Cash driven Securities Lending and Borrowing (SLB)

As it is stated in paragraphs 70 to 73 of the CP, there is no specific template to report cash driven SLB. Given that ESMA proposes to report such transactions as repos, SLB or margin loans. This situation is far from being satisfactory. Indeed:

- It would create discrepancy between the way the trade is booked within the investment firm, the type of master agreement under which the trade is concluded and the way the trade is reported.
- None of the three ways of reporting (repos, SLB, margin loans) proposed by ESMA is convenient for cash driven SLB.
- The fact that there is a choice to report such transaction will increase the number of mismatches.

Therefore, AMAFI strongly believes that a dedicated template should be developed in order to report those transactions.

If this were not the case, ESMA should impose one single way of reporting those transactions. According to AMAFI's analysis, the report should be done as repos.

### Re-use reporting for cash reinvestment

The scope of re-use reporting for cash reinvestment is far from being clear. In paragraph 382 of the CP, ESMA states that « *Counterparties should report cash collateral reinvestment when cash is been used as collateral in a SLB transactions and reinvested, either directly by the lender (collateral taker) or on behalf of the lender by an agent. Cash collateral from other SFT types, or cash collateral from SLB transactions that is used for other purposes (e.g. proprietary trading) is not in the scope* ».

AMAFI understands that this obligation only applies where cash collateral is reinvested on behalf of beneficial owner lenders. Therefore, it only concerns agent lender and do not applies to banks or broker dealers. AMFI would like ESMA to confirm this interpretation.

### Back loading

AMAFI believes that ESMA should set a unique method for all the actors, instead of leaving two options on the table. Either actors should report all transactions on start date, or only report open transactions up to 180 days after start date. The two solutions have disadvantages that should be dealt with once implemented, yet there needs to be a harmonisation of the solution chosen by ESMA.

### Reporting of settlement fails

In table 5 (mapping business events to action types and levels), page 37 of the CP, ESMA introduces a “Counterparty default or settlement fail” event.

AMAFI understands that this report should be populated only when a counterparty or settlement fail ends up with a new agreement (a new contract) between the two counterparts and would like ESMA to clarify its expectations regarding this topic, taking into account the fact that CSDR requires to report settlement fails.