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How should a repo with an EU central bank (ESCB member) be reported under MiFIR?

According to SFTR Article 2(3), SFTs concluded with members of the European System of Central Banks (ESCB) --- the ECB and the (currently) 28 national central banks in the EU --- are exempt from the SFTR transaction reporting obligation. However, SFTs exempt from transaction reporting under SFTR have been explicitly brought into scope for MiFIR transaction reporting requirements under Article 26 of the regulation through Article 2(5) of the related RTS 22.

ESMA have provided a partial example of a repo report under MiFIR (ESMA Guidelines on Transaction Reporting, Order Record Keeping and Clock Synchronisation under MiFID II (ESMA/2016/1452 of 10 October 2016, corrected on 7 August 2017), p175, Example 87). The example highlighted five fields:

- *4 Executing Entity Identification Code* = LEI
- *7 Buyer Identification Code* = LEI
- *16 Seller Identification Code* = same LEI as 4
- *41 Instrument Identification Code* = collateral ISIN
- *65 Securities Financing Transaction Indicator* = TRUE

Two proposed MiFIR reports have been added to the portfolio of draft sample reports published by the ICMA's SFTR Task Force (5.1 to 5.2). The key principle underlying the sample reports is that repo is not a financial instrument for the purposes of MiFID II/MiFIR and repo reports under MiFIR should therefore be of the underlying movement of securities and not of the repo itself.

Sample report 5.1

It has been necessary to add some fields to the ESMA example in order to provide a report recognizable as a repo (although the example provided by ESMA was not intended to be a complete report). In particular, sample report 5.1 also includes:

- *2 Transaction Reference Number* --- code of up to 52 alphanumeric characters.
- *28 Trading Date Time* --- date and time when the repo was executed. The date is the transaction date (T) of the repo.
- *33 Price* --- the clean price of the purchase leg of a repo expressed for fixed-income securities as a percentage --- in line with market practice, we assume that the price does not include any haircut (but note that this is not fully consistent with field 35 which is inclusive of any haircut).
- *35 Net Amount* --- for the purchase leg, this is the amount paid on the purchase date for the collateral security, which is the purchase price of the repo.

- *36 Venue* --- MIC code *XOFF* is required where the securities being provided as collateral are trading or have been admitted to trading on a regulated trading venue (which is likely to be the case).
- *62 Short Sell Indicator* --- the fact that the sale of securities in a repo is not a short sale is recognized by filling this field with SELL in the case of securities subject to the Short Selling Regulation, ie EU government securities and equities.

The sample reports do not include the repurchase leg of the repos as these are not the result of a new investment decision but are part of the original contract. Moreover, the use of field *65 SFT Indicator* makes it clear that there will be a repurchase in the future.

Sample report 5.2

The ESMA example of a MiFIR report of a repo does not provide for repos against multiple securities. Unless ESMA accepts that only one security in a basket is reported, the only option would appear to be to report a repo against multiple securities as a complex trade, which would be identified by *40 Complex Trade Component ID* (up to 35 alphanumeric characters) but with the sale of each security treated as a component transaction of the complex trade with its own *2 Transaction Reference Number*. This option is illustrated in sample report 5.2.

Characterizing a transaction as a complex trade is only possible if the transaction is executed at a single price, so *33 Price* must be the same for each component. *28 Trade Date Time* will also be the same for each component.

In the sample report, field *35 Net Amount* has been filled in, as this may be necessary to ensure validation by the ARM.

Other issues

One problem that has not been resolved relates to the timing of reports. In the case of certain repos, e.g. most trades that involve a tri-party agent, the collateral will be allocated too late to be reported by the MiFIR reporting deadline on T+1. A solution would be to follow SFTR and allow for a delay in such cases in reporting to S+1 (at the latest), perhaps also conditional on *field 65, Securities Financing Transaction Indicator*, being filled in.

Another unresolved question is on the exact scope of the MiFIR reporting requirements and in how far this covers pledge-based repo structures. These are used by some EU central banks as "repos". On the one hand, according to Articles 2(2) and 2(3) of the relevant RTS, a transaction is defined as an acquisition or disposal of financial instruments. This would seem to apply only to transactions in which, in the case of non-derivatives, legal title is transferred. This is also supported by Article 2(5)(o) which excludes acquisitions or disposals that are solely a result of a transfer of collateral. On the other hand, Article 2(5) refers to SFTs more generally as defined in SFTR, which would seem to in turn include pledge-based repo-like structures.

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