

ESMA clarifications on the reporting of repos with EU central banks under MiFIR

Received on **8 May 2020** in response to a proposal submitted by ICMA in November 2019. The initial proposal included [two sample reports](#) setting out the proposed reporting approach and a short [explanatory note](#).

ESMA response to the query received on 8 May 2020:

“The proposals you shared with us related to reporting of securities financing transactions (SFTs), and in particular repos with a single or multiple underlying collateral securities, with the ESCB members according to the requirements set in MiFIR and RTS 22 (Commission Delegated Regulation 2017/590). As pointed out in your analysis, the RTS 22 does not capture all aspects of an SFT. However, please note that not all aspects of an SFT are relevant for RTS 22, which was designed for the purpose of market surveillance rather than systemic risk monitoring. In particular, an investment firm should ensure that a collective view of the transaction reports reported accurately reflects all changes in its position and in the position of its clients that arise from the reportable transactions concerned at the time such transactions were executed. At the same time, the reporting should not capture the Investment Firm’s or the Investment Firm’s client’s actual position, what is of interest is the change in position resulting from reportable transactions (Section 5.1., page 14 of the Guidelines on Transaction reporting, order record keeping and clock synchronisation under MiFID II: https://www.esma.europa.eu/sites/default/files/library/2016-1452_guidelines_mifid_ii_transaction_reporting.pdf).

With the above in mind, I invite you to consider the below detailed feedback on each of the issues raised in your letter, which is based on the assessment of the practical application of SFTs reporting under MiFIR and corresponding discussions with the NCAs experts.

The examples illustrated in your letter cover two scenarios: 1) repos with only one collateral security (covered in ESMA Guidelines on transaction reporting) and 2) repos with multiple collateral securities. In both examples provided by you only the purchased leg is captured by the reporting; however, we acknowledge that the use of SFT indicator (field 65 of RTS 22) implicitly recognise the existence of a repurchase leg within the SFT structure.

1. Repos with one collateral security

With reference to the price and net amount (fields 33 and 35 of RTS 22) proposals of using respectively the clean and purchase price belonging to the repos, the approaches are considered reasonable and aligned with the MiFIR reporting practices.

The proposed solution of using XOFF for field 36 (Venue) complies with the requirements when the collateral securities are traded or admitted to trading on a trading venue in the context of the provided examples.

Concerning the use of the Short selling indicator (field 62), we confirm the validity of your proposal to populate this field with SELL in the case of SFTs in financial instruments subject to the Short Selling Regulation, i.e. EU government securities and equities.

With regards to the SFTs that have a basket collateral with no ISIN, we understand that the case you bring to our attention (explanatory note marked in red to field 41, tab 5.1 of the example provided in the excel that was enclosed to your letter) relates to an SFT where the basket is the main instrument and not the underlying of any financial instrument. In this respect, please note that only transactions in a “financial instrument” fall within the scope of transaction reporting under MiFIR Article 26. Baskets *per se* are not considered “financial instrument” within the meaning of MiFID II (See definitions in Annex I, section C of the MiFID II <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065>); they are reportable only when they are the underlying of a financial instrument, e.g. an equity basket swap as shown in examples 110 and 111 of the Guidelines on transaction reporting. Given that baskets are not considered “financial instrument”, field 41 on the “identification of the financial instrument” should not be populated with the ISIN of the basket itself.

In this instance, the application of the reporting requirements under RTS 22 is dependent on whether the basket components are reportable; i.e. if the components of the basket are instruments traded or admitted to trading on a trading venue in accordance with Article 26(2). Therefore, if none of the basket components are instrument reportable under Article 26(2), the related SFT transaction is not reportable. However, if all or some components of the basket are reportable under Article 26(2), then the SFT should be reported in the same way as repos with multiple collateral securities as detailed in the section below, i.e. the SFT in each of those basket components should be reported separately and each component should be linked with the Complex Trade Identifier (field 40 of RTS 22).

2. Repos with multiple collateral securities

We confirm that the reporting of a repo with multiple collateral securities as a complex trade is acceptable through linking each component with the Complex Trade Identifier (field 40 of RTS 22); in this case, each transaction executed in financial instrument is a component of the complex trade and is reported separately with its own Transaction Reference Number (field 2), same Trade Date Time (field 28), same complex trade identifier (field 40) and same Price (field 33).

3. Other issues: timing of reporting and pledge-based repos

Regarding the case of repos involving tri-party agent and the allocation of the collateral later than the day following the execution date, you have correctly highlighted that Article 26(1) of MiFIR sets a clear legal deadline by stating that “Investment firms [...] shall report [...] to the competent authority as

quickly as possible, and no later than the close of the following working day". Therefore, reports that are linked to collateral allocation delays that are not reported within the timeline envisaged in Article 26(1), will be considered as "late reports" in line with the legal requirement under Article 26(1); however, please note that such reports will not be automatically rejected by the NCAs systems (see paragraphs 16-29 of the MiFIR transaction reporting instructions available on ESMA website: https://www.esma.europa.eu/sites/default/files/library/2016-1521_mifir_transaction_reporting_technical_reporting_instructions.pdf).

It is within the Competent Authorities discretion to decide on the treatment of such late reports in light of their supervisory priorities upon having determined (on the basis of indicator provided in field 65 of RTS22) that these late reports are linked to collateral allocation delays.

Concerning the case of "pledge-based repo-like structures", we confirm your interpretation based on Article 2(5)(a) of RTS 22, which makes a reference to the definition of securities financing transactions in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council (SFTR). In line with this interpretation, in the case of SFTs, the concept of "transaction" that should be used for the purpose of reporting is defined in the SFTR and not in Article 2(2) of RTS 22. Consequently, the list of exclusions from such definition of transaction in Article 2(5) equally does not apply to SFTs.

In response to the interpretation of the remaining fields and the proposals on how the transaction data should be reported that are provided in the in the examples of the annex of your letter, they are in line with the expectations of NCAs and ESMA on the reporting of SFTs under RTS 22. We encourage you to share the information provided in your interactions with other industry participants."