

Section	Questions and comments
General remarks	
	<p>The ICMA ERCC would like to thank ESMA for the opportunity to respond to this consultation on draft Reporting Guidelines under SFTR and more generally for the open dialogue on the implementation of this challenging file. This submission was collated based on feedback from members of the ICMA ERCC SFTR Task Force (“SFTR TF” – see background below) and complements detailed comments previously submitted to ESMA, most recently ahead of the industry workshop hosted by ESMA in Paris on 16 July. Where relevant, we also tried to incorporate and reference the helpful discussion at the workshop.</p> <p>Besides the consultation response itself, we would like to share with ESMA two documents with additional more specific feedback which we hope will usefully complement our consultation response. Attached to this response you will find the following documents that have been put together over the past months based on feedback from members of the SFTR TF:</p> <p>1) SFTR sample reports:</p> <ul style="list-style-type: none"> • A set of practical examples of how the SFTR TF believes SFTR reporting should ultimately look, based on our interpretation of the SFTR itself and additional guidance provided by ESMA, complemented by proposed best practice recommendations agreed by the SFTR TF; • The sample reports currently cover around 30 different repo scenarios, including initial reports and subsequent lifecycle events, but also examples for reuse reporting and the reporting of variation margining (both CCP and non-cleared); • The attached document includes an overview table (LIST tab) and footnotes in each tab with additional explanations and comments; • A previous version of the sample reports was shared with ESMA as part of prior discussions, most recently in April 2019 <p>2) Overview of repo lifecycle events:</p> <ul style="list-style-type: none"> • Comprehensive overview of relevant repo life-cycle events that we think would trigger a reporting obligation under SFTR, including an agreed reporting approach for each of these, including applicable action type (NEWT, MODI, COLU etc) and the required timing of the report • The table should be seen as part of our feedback to Table 5 in the draft Guidelines (pp.37-40) which maps business events to action types and levels and complements our responses to Q27-28 below. Column K of our document maps the proposals to ESMA’s table 5 and includes a colour code to indicate any differences and gaps. <p>In addition to the documents mentioned above, we are also working with members of the ERCC SFTR TF on more detailed best practice recommendations in relation to SFTR reporting, which we plan to incorporate into the ERCC’s existing Repo Best Practice Guide, as an Annex specifically focused on SFTR reporting. The Annex itself is still an internal working draft, but a lot of the feedback in this consultation response is taken directly from the latest draft. We are currently updating the Annex to take into account ESMA’s draft Guidelines and hope to be in a position to publish a draft of the SFTR Annex in the next few weeks. At that point we will also share the Annex with ESMA and</p>

	<p>look forward to receiving any feedback and questions on the document, which we hope will serve as useful additional input for the final Guidelines.</p> <p>Before addressing the specific consultation questions, we would like to stress, as a general remark, the important challenge that reporting firms are facing with the timing of SFTR implementation. As pointed out previously, in order to comply with the extensive SFTR reporting regime firms are required to implement very significant and complex IT builds and changes to internal systems. In order to allow firms a reasonable timeframe for development and industry testing, the key requirements need to be clearly understood well ahead of the actual reporting go-live. The minimal budget cycle for projects is a year but complex projects can be multi-year. Against this backdrop, we note that the final SFTR Guidelines will only be available in the course of Q4 2019. By this time, most firms will have their core IT developments largely concluded. This means that firms will be forced to make assumptions (based on guidance already available and complementary cross-industry discussions and agreed best practices). We are aware of the constraints that ESMA is facing in terms of governance. Nevertheless, we would like to ask ESMA to be as transparent as possible regarding their evolving thinking on the key open questions and would be keen to continue the good and open dialogue following the end of the consultation. The ICMA ERCC stands ready to clarify and discuss any questions related to our feedback or any other related questions.</p> <p><u>Background: The ICMA ERCC SFTR Task Force</u></p> <p>ICMA's European Repo and Collateral Council (ERCC) created a dedicated SFTR Task Force in 2017 to lead and coordinate the industry's implementation effort in relation to repos (repurchase transactions and buy/sell-backs). The group now includes more than 600 representatives from well over 100 ICMA member and other firms covering the whole spectrum of the market, including buy-side, sell-side and market infrastructures (including trading venues, CCPs and tri-party agents), but it is also open to Trade Repositories and other service-providers that are looking to develop solutions to help reporting firms comply with SFTR.</p>
<h2>5. General Principles</h2>	
<p>5.1 Determining the number of reportable SFTs (p.11)</p>	<p><i>Q1. Do you agree with the above assessment? Are there any other transactions for which clarification is needed? Please detail the reasons for your response. [para 6-46, p.18]</i></p> <p>Section 5.1.1. covers 8 types of transactions (5.1.1.1 – 9) which ESMA deems out of scope for SFTR reporting purposes. We welcome this important guidance but would like to raise the following questions in relation to the different sub-sections, which we think need to be clarified. In order to avoid any confusion as to the scope of SFTR, it will be extremely important to make sure that the descriptions in this section of the Guidelines are accurate and reflect existing market practice.</p> <p>1. Retail client lending We agree with the guidance in relation to retail client lending.</p> <p>2. Private banking and Lombard Loans We agree with the guidance in relation to private banking and Lombard Loans.</p> <p>3. Overdraft facilities of custodians and CCP daylight lending facilities</p>

	<p>We generally agree with the guidance provided by ESMA but would welcome some further clarifications regarding the scope of the sub-section. We assume that the section refers more generally to the extension of intraday credit (in commercial bank money) to facilitate the settlement process, i.e. similar to auto-collateralisation offered by T2S or Euroclear UK and Ireland in central bank money (see section 6 below). We would remark that such intraday credit facilities are offered by custodians but also by several (I)CSDs (on a secured basis). On the other hand, we understand from the CCPs that are represented on the ERCC SFTR Task Force that they are not offering any daylight lending facilities as described in the Guidelines.</p> <p>We would therefore recommend reframing section 5.1.3 as “Intraday credit facilities provided by custodians and (I)CSDs” and to specify that this covers any intraday credit facilities offered by custodians and market infrastructures that are used purely to facilitate settlement. These facilities are usually collateralised by the client’s securities account and are an inherent part of the settlement process. As such, they do not establish a new trading position and including them in the SFTR transaction reporting would thus necessarily result in double counting and would distort the SFT data collected. In order to make sure that the exclusion covers all the relevant facilities, it should apply irrespective of the legal method of securing the intraday credit, which we understand may differ across providers.</p> <p>4. Syndicated lending and other corporate loans We agree with the guidance in relation to syndicated lending and other corporate loans.</p> <p>5. CSD fails-curing overdraft We agree with the guidance provided in relation to the CSD fails-curing overdraft. However, we are not aware of any unsecured fails-curing facilities.</p> <p>6. T2S auto-collateralisation We welcome ESMA’s clear guidance that the T2S auto-collateralisation mechanism is not subject to SFTR reporting. This makes sense and is in line with our previous feedback on this topic. As explained in our initial letter to ESMA on this topic from 31 October 2017, a very similar functionality in central bank money exists in the UK. The mechanism is called Auto-Collateralised Repos (ACR) and is offered by the UK CSD (Euroclear UK and Ireland) in conjunction with the Bank of England. Considering the close similarity between T2S auto-collateralisation and ACR in the UK we believe that the exclusion in section 5.1.6 should equally apply to both mechanisms. This should be clearly stated in the Guidelines.</p> <p>Euroclear provided the following description of the ACR facility:</p> <p>In November 2001 Euroclear UK & Ireland (EUI) and the Bank of England introduced an auto-collateralisation process called Auto-Collateralised Repos (ACR) to generate GBP central bank liquidity in the CREST Service. The automated ACR process is similar to T2S Auto-collateralisation and enables a CREST settlement bank to supplement its own cash liquidity (which has been set aside from clean payments in RTGS), with additional central bank liquidity within the CREST system. The provisions of the ACR process are defined in both the CREST Reference Manual and the RTGS Reference Manual.</p> <p>The settlement process in the CREST system automatically checks if there is sufficient central bank liquidity for the purchaser’s settlement bank to satisfy interbank payment obligations arising from the underlying transaction. If this is insufficient, the process attempts to generate further central bank liquidity by simultaneously delivering eligible assets (UK Gilts and Treasury Bills) to a dedicated account operated by</p>
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	<p>the Bank of England. Similar to T2S auto-collateralisation, the credit provided can be secured using either the same securities that are being purchased (“on flow”) or securities already held by the buyer (“on stock”).</p> <p>The ACR process is running the entire settlement day (06:00 to 17:30) and results in an average of 9.000 ACRs per day between around 60 clients and their settlement banks (around 20). For the leg between the settlement bank and the Bank of England there are around 8.000 ACRs generated automatically during the day. The system supports an intraday substitution facility where a specific security is required by a settlement bank client for onwards delivery. Any outstanding ACR positions will be reimbursed when there is sufficient liquidity, so the majority of the ACRs are reimbursed within one hour or even within minutes, but at the end of the day all outstanding ACR positions are automatically reimbursed.</p> <p>EUI and ICMA are of the view that ACRs should be considered as an intra-day credit facility equivalent to T2S auto-collateralisation and should therefore be explicitly excluded from SFTR reporting. Similar to T2S auto-collateralisation (and also similar services offered by custodians and CSDs in commercial bank money covered under section 5.1.3) ACR is closely linked to the settlement process rather than constituting SFTs in their own right. Reporting these as separate SFTs under SFTR would create significant noise and would impair overall data quality.</p> <p>7. Give-ups take-ups in the execution and clearing chain The scope of section 5.1.7. is not entirely clear. Can ESMA provide more details on the scenarios that section 5.1.7 aims to cover? We presume that give-ups and take-ups in this section refer primarily to the centralizing role of prime brokers in margin lending. But the reference to “clearing chain” has been taken by some to mean that this section applies to the submission (sometimes called a give-up) of bilateral repo to a CCP post trade. This would seem to be a departure from the previously suggested approach in relation to CCP-cleared repo. Can ESMA please provide further clarification?</p> <p>8. Transactions involving emission allowances We agree with the guidance in relation to emission allowances.</p> <p>In terms of additional scenarios to be clarified, we note that some emerging markets trade instruments called “repo” which are not true (title transfer) repo. For example, so-called “pledged repo” in China is repo only in name. They are not repos or another form of SFT. True repos can only transfer collateral by title transfer. This is clear from recognized repo contracts and their regulatory treatment, which reflects the higher risk of collateral which is a security interest. While these instruments are unlikely to be traded in Europe at the moment, it would be important to clarify whether these should be considered in scope of SFTR were they traded by in-scope entities and what the relevant criteria would be. Similarly, some central bank “repos” are in fact based on pledges. While SFTs with EU central banks are exempt from SFTR (and reportable under MiFIR), the question remains relevant for repos concluded with third-country central banks which we understand are still reportable under SFTR. In general, it would be important to set clear boundaries for SFTR reporting. Our understanding is that it was not the intention of the co-legislators and ESMA to include secured lending (cash lending secured by a security interest such as a pledge or lien) in SFTR reporting, other than in the highly specialized case of margin lending. Can ESMA confirm that this is correct?</p>
<p>5.1.2 Aspects related to all types of SFTs (p.18)</p>	<p><i>Q2. 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. [para 47-55, p.19]</i></p>

	<p>We generally agree with the description.</p> <p>One minor comment regarding para.49 (p.18): The term “intermediary” includes principals trading and should not be used just for agents and arrangers.</p>
<p>5.1.3 Aspects related to repos (p.19)</p>	<p><i>Q3. Do you agree with the approach for reporting repos and reverse repos as detailed in this section? Please detail the reasons for your response. [para 56-58, p.19]</i></p> <p>Paragraph 56 states that repos in multiple currencies are supposed to be reported as separate transactions. Although we are not aware of current examples, they could occur (eg a SDR-denominated repo). It is not clear why a contract should be divided for reporting purposes. Also, what if the repurchase price is in a different currency than the purchase price (this is allowed by the GMRA)?</p> <p>We understand that a similar issue arises for securities lending and borrowing, where only one ISIN per loan is allowed, despite the possible lending of portfolios and indices [pp.20-21, para.65].</p> <p><i>Q4. 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. [para 56-58, p.19]</i></p> <p>As mentioned in our response to Q1, we would welcome ESMA clarification regarding so-called “pledged” repos, as they are being used in some emerging markets.</p>
<p>5.1.4 Aspects related to BSB/SBB (p.20)</p>	<p><i>Q5. 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. [para 59-63, p.20]</i></p> <p>We take note of ESMA’s clarification in paragraph 61 that a buy/sell-back governed by a master agreement should be reported using the BSB template and reporting the master agreement in field 2.9 – 11.</p> <p>We would like to reiterate our concerns with the misleading definition in the level 1 SFTR text which should be corrected as soon as a revision of the text is possible. It is also important to repeat that (documented) buy/sell-backs are functionally equivalent to repos and require exactly the same reporting logic. This needs to be reflected in the validation rules. We noted several issues with the previous version of the Validation Rules, e.g. that COLU and ETRM were not applicable to BSB, which seem to have been corrected in the latest version of the rules.</p> <p>Finally, we would point out that there is currently no applicable field to report the price of a buy/sell-back. The draft RTS on reporting did not allow a repo rate to be reported for buy/sell-backs in either Table 2, field 23, <i>Fixed Rate</i>, or Table 2, field 25, <i>Floating Rate</i>. Nor did it allow reporting of the traditional price of a buy/sell-back, which is the forward break-even yield or forward price of the collateral. The final RTS on reporting has tried to address the lack of a price field for buy/sell-backs by making Table 2, field 49, <i>Security or Commodity Price</i>, a mandatory field for this type of repo. Unfortunately, the field is defined as “the price of the security or commodity used to calculate the trade amount for the <u>spot leg</u> of the buy-sell back”, which is not a market convention for quoting buy/sell-backs. In the context of a BSB, field 2.49 would seem to merely duplicate the information initially provided in field 2.87 (<i>Price Per Unit</i>), even if the former then remains fixed over the lifetime of the BSB while 2.87 will be updated through collateral updates.</p>

<p>5.1.5 Aspects related to Securities lending and borrowing (p.20)</p>	<p><i>Q6. 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. [para 64-69, p.21]</i></p> <p>No comments</p> <p><i>Q7. 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. [para 64-69, p.21]</i></p> <p>No comments</p> <p><i>Q8. Which approach would you favour in terms of reporting cash-driven SLB? Please detail the reasons for your response. [para 70-73, p.22]</i></p> <p>ESMA argues in paragraph 72 that reporting cash-driven or reverse securities loans according to the SLB template would come with a number of practical challenges, e.g. some fields are not applicable, likely misinterpretation of the purpose of the transaction and an unnecessary multiplication of the number of reports. We agree with this assessment and would add that there is also an issue with the timing of the collateral data reporting. This will often not be known by the T+1 reporting deadline – the same timing as for other similar repos should therefore apply, i.e. reporting by S+1 at the latest.</p> <p>As a result, reporting cash-driven securities loans under the repo template is in our view the best and indeed only practical approach and should therefore be permitted. It is worth noting that this of course still means that the related securities lending legal agreement would be reported, which makes it very clear that these trades are in fact not repos but securities loans (i.e. concluded under GMSLA or similar agreement). Clear guidance on this topic will be helpful, as we of course recognise the need for counterparties to agree an approach as a pre-condition for reconciliation.</p> <p>As a side note, in paragraph 70 ESMA states that cash-driven securities loans “appear to be primarily related to CCPs (as part of their business activities other than central clearing), taking place under the CCP’s own contractual arrangements (i.e. not GMSLA) and through a triparty agent”. We would question this assessment and point out that reverse securities loans are frequently concluded under the GMSLA and that CCP clearing rules are used purely for clearing. CCPs do not recognize this reference.</p>
<p>5.1.6 Aspects related to SFTs involving commodities (p.22)</p>	<p><i>Q9. 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. [para 74-78, p.22]</i></p> <p>Commodity repos are outside of the ERCC’s remit, hence no comments.</p> <p>In relation to paragraph 77, we would simply point out that there is no pledging under any standard repo agreement (see also our response to Q1).</p> <p><i>Q10. Are there any aspects that need to be clarified with regards to this type of SFTs? Please detail the reasons for your response. [para 79-81, p.23]</i></p>

	<p>No comments.</p> <p><i>Q11. 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. [para 82-83, p.23]</i></p> <p>No comments.</p>
<p>5.2 Reporting of CCP-cleared SFTs (p.23)</p>	<p><i>Q12. 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. [para 81-86, p.24]</i></p> <p>No additional clarifications needed. As pointed out previously, we share ESMA's assessment that position level reporting of CCP-cleared repos under the stated conditions is not a feasible option.</p> <p>We note that section 6 of the draft Guidelines nevertheless contains many repo examples based on position-level reporting. It might be worth to replace (some of) these examples with scenarios that are of more practical relevance.</p>
<p>5.3 Allocation of responsibility under Article 4(3) SFTR (p.25)</p>	<p><i>Q13. 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. [para 91-94, p.25]</i></p> <p>We note ESMA's guidance in relation to the reporting of small NFCs, in particular in case a third-country FC is involved. We expect that a scenario where an EU small NFC would trade with a TC FC (no equivalence) and hence report itself would seem to be very unlikely given the additional burden involved for the small NFC.</p> <p>Given the criteria set out in SFTR to determine whether an NFC is to be considered "small", there is a risk that this status changes over time. Where an in-scope (small) NFC trades with an in-scope FC, is it the responsibility of the NFC to duly inform their counterparty of any relevant changes to their financial status, i.e. whether they qualify as a small NFC? Or is the FC instead expected to rely on the annual report of the NFC? In the latter case, given the link to the Accounting Directive, we assume this would mean that the FC would have to make an assessment once a year upon each publication of the NFCs annual accounts.</p> <p>In this context, we would like to ask ESMA to provide further guidance in relation to (delegated) reporting of re-use on behalf of a small NFC (also discussed in our response to Q79). In order to correctly apply the reuse formula, the FC responsible for the reporting will have to rely on additional information from the small NFC which the latter might be reluctant to provide as this can be commercially sensitive, in particular in relation to own assets. The alternative would be for the small NFC to calculate the formula itself and pass on the resulting estimate to the FC for reporting purposes. Further guidance from ESMA on this process would be welcome. We note that tables 106 and 107 in the draft Guidelines cover this scenario. However, the examples do not specify who calculates the estimate or how the additional data points are shared/obtained. There is also a question whether a small NFC trading with more than one FC will have its re-use reports made several times by the different FCs. Finally, can ESMA clarify the timing of reuse reporting on behalf of small NFCs? We assume that</p>

	<p>reuse reports (for given ISINs) by a particular FC will have to be submitted only as long as the related SFTs between the NFC and FC are open. Is this correct?</p> <p><i>Q14. 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. [para 95-97, p.26]</i></p> <p>We note ESMA's guidance in relation to the reporting obligation in the context of AIFs and UCITS funds. It will be important to make sure that the wider market is aware of the issue and the important distinction between AIFs and UCITS funds in terms of fund manager location/ reporting responsibility described in the Guidelines. We would encourage ESMA to widely publicise the related guidance across the various stakeholders.</p>
<p>5.5 Branches</p> <p>5.5.1 Application of SFTR reporting obligations to SFTs concluded by non-EU entities with EU branches (p.26)</p>	<p><i>Q15. 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. [para 100-103, p.27]</i></p> <p>In section 5.5.1 ESMA helpfully provides guidance on the meaning of a "conclusion" by a branch. In particular, paragraph 102 specifies that a branch is deemed to have concluded an SFT if at least one of four conditions is met.</p> <p>The proposed approach is far-reaching, and we would like to point out that it is not in line with the approach under EMIR where the regulatory purpose is to ascertain outstanding derivatives held in the EU. ESMA's SFTR Final Report (p.12) expressly states that "the legal framework laid down by SFTR should, to the extent possible, be the same as that of EMIR in respect of the reporting derivative contracts to trade repositories for that purpose". Instead, the proposed approach would seem to shift the focus to the activity of individuals rather than the risk held in the EU which departs from the aims of SFTR. There is also no decision-maker field under SFTR and therefore these proposals seem to go beyond the aims of SFTR. The approach would also create a discrepancy between the way EU entities and EU branches of third-country firms are treated for the purposes of SFTR transaction reporting, as the former are required to transaction report SFTs if they are a counterparty to the SFT.</p> <p>The latest guidance suggests that a branch would not have to report an SFT if the investment decision relating to that transaction and the execution were made by persons not supervised in the branch. It is not clear who would be the relevant supervisor in a chain of supervision from a branch to its parent. We assume investment decision would not be relevant for transactions not for own account.</p> <p>Overall, while we appreciate ESMA's attempt to provide guidance on this question, we would caution that the proposed approach introduces additional ambiguity and is likely to create uncertainty among third party firms as to when their EU branch activity is in scope of SFTR reporting. We would favour a more straightforward approach, ideally along the lines of the approach adopted under EMIR.</p> <p>ESMA should also be aware that the proposed scope extension is likely to create a number of practical challenges.</p> <p>In a scenario where a TC entity concludes an SFT with an EU entity, and its EU branch is brought into scope for SFTR reporting based on the conditions proposed by ESMA (without being a counterparty to the trade), the TC entity would have two options for reporting:</p> <ol style="list-style-type: none"> 1. To send the report with no reference to the EU based branch in the counterparty data which would be a correct representation of the trade and its risk however would cause practical issues:

	<ul style="list-style-type: none"> ○ <i>Eligibility determination</i> – it would be very difficult for anyone to verify the correctness of the report as none of the data points within the report itself would indicate why it had been reported, this would make it very difficult for any reporting firm to have a robust control process around their reporting ○ <i>NCA monitoring</i> – in the absence of any reference to a specific EU location the TRs would have no indication as to which NCAs should have access to this data which would effectively appear to belong to an NCA outside of the EU; or <p>2. To send the report with a reference to the EU based branch counterparty data which would be an incorrect representation of the trade and its associated risk and would also cause practical issues:</p> <ul style="list-style-type: none"> ○ <i>Branch of the other counterparty</i> – where the counterparty to a trade reported by the third country branch is an EU entity, the EU entity would have the trade recorded correctly in their own system as a contract directly with the third country entity and would report it accordingly with field 1.8 (Branch of the other counterparty) blank. This would mean that the trade reported by the EU entity would disagree with the trade reported by the TC entity on the branch information by default. It would also likely cause issues in the reconciliation process as the TR receiving the trade from the EU entity would view it as single-sided report. ○ Alternatively, the EU entity could attempt to report the transaction with the branch of the other counterparty populated with the relevant EU country code however this would mean both misrepresenting their own record of the transaction from their books and records and the risk associated with it. <p>Irrespective of the reporting approach chosen by the third country firm, there are also a number of general practical issues that will be caused by attempting to bring this subset of trades into scope. In particular:</p> <ul style="list-style-type: none"> a. <i>Net exposure collateral reporting</i> – as both parties to the transaction would record the collateral based on the contracting entities, determining which collateral is reportable under a given portfolio would be extremely difficult. For example, for an EU entity who has transacted numerous times with a third country entity they would have a set of collateral covering any net exposure. If a subset of the trades with the third country become reportable both the EU entity and third country entity would somehow need to agree which subset of collateral within the net exposure should be reported as well even though in reality the collateral had been exchanged between the two LEIs and therefore no specific collateral pieces could realistically be described as applying to the exposures generated by the trades where the third country entities branch was somehow involved in the initiation of the deal. This would lead to complication in the reporting process, would be difficult to place controls around and would ultimately be arbitrary determined rather than an accurate reflection of risk b. <i>UTI Generation and sharing</i> – when transacting with the third country entity an EU entity would have no current reason to systematically record that someone within the EU based branch of the third country had been involved and would instead correctly reflect the contract and associated risk as sitting with the third country entity. As such it's very unlikely they would capture the need to share a UTI with the third country entity or to correctly apply the UTI waterfall logic to determine whether they should generate or receive a UTI. As a result, it's highly likely that both sides would report the same transaction with a different UTI leading to regular mismatches c. <i>Collateral re-use reporting</i> – the third country entity would presumably have a re-use reporting requirement for the subset of transactions reported however much like the net exposure reporting it would be very difficult for them to extract the individual elements that only relate to transactions which have involved their EU based branch at some point leading to significant complexity and likely meaningless numbers.
5.5.2 Determination of reportable SFTs when	Q16. 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. [para 104-107, p29]

<p>concluded by branches (p.27)</p>	<p>Table 1 is helpful. However, we also note that the table does not reflect the proposed additional criteria provided by ESMA in relation to a “conclusion” by a branch and therefore does not provide any further clarity on this question. As mentioned above, the additional criteria are likely to introduce ambiguity and confusion among the impacted third country firms as to when their branch activity is in scope.</p>
<p>5.6 Reporting of intragroup transactions (p.29)</p>	<p><i>Q17. Is the proposed guidance for reporting of intragroup SFTs clear and comprehensive? Which areas require further clarification? Please detail the reasons for your response. [para 108, p.29]</i></p> <p>The proposed guidance is clear. We understand that paragraph 108 refers to transactions between two separate legal entities within a group (i.e. two separate LEIs).</p>
<p>5.7 Reporting by an NFC (p.29)</p>	<p><i>Q18. 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. [para 109-113, p.30]</i></p> <p>We generally agree with the proposed approach. However, as mentioned in our response to Q13, we would invite ESMA to clarify the following:</p> <p>Considering the criteria set out in SFTR to determine whether an NFC is to be considered “small”, there is a risk that this status changes over time. Where an in-scope (small) NFC trades with an in-scope FC, is it the responsibility of the NFC to duly inform their counterparty of any relevant changes to their financial status, i.e. whether they qualify as a small NFC? Or is the FC instead expected to rely on the annual report of the NFC? In the latter case, given the link to the Accounting Directive, we assume this would mean that the FC would have to make an assessment once a year upon each publication of the NFCs annual accounts.</p>
<p>5.8 Timely reporting of conclusion, modification and termination of an SFT (p.30)</p>	<p><i>Q19. Do you agree with the proposal for reporting conclusion of SFTs? Please detail the reasons for your response. [para 115-116, p.30]</i></p> <p>Para 116 states: “<i>In case an SFT that is concluded is subsequently cancelled or not completed, due to reasons attributable to the counterparties or to third parties, such as CCPs or CSDs, then the counterparties after reporting it with Action type “New” or “Position Component”, as applicable, should report it with Action type “Error”.</i>”</p> <p>It is not fully clear to us what use cases paragraph 116 refers to. In general, if a trade is concluded, a contract has been put in place, so the cancellation of that contract should be an ETRM or MODI message (depending on the timing of termination settlement – see below). Only if a contract was not validly created or was out of scope of the SFTR should EROR be used.</p> <p>Unfortunately, the underlying assumption that in the case of CCP-clearing a prior repo exists, even where parties trade contingent upon acceptance by a CCP, creates an inconsistency in Action Types. In the rare case where a trade submitted for clearing is subsequently rejected by the CCP, it may therefore indeed be necessary to use EROR. However, ESMA should be very clear on the criteria for the use of EROR or there is a risk it will become a convenient but misleading way for some firms to routinely close reports.</p> <p><i>Q20. Do you agree with the proposal for reporting modifications to SFTs? Please detail the reasons for your response. [para 117, p.30]</i></p>

In paragraph 117 ESMA clarifies that modifications should be reported only once they have “taken place”. It is not always clear what this means.

For example, we would like to ask ESMA to confirm how the (early) termination of fixed-term and open repo is expected to be reported. The draft Guidelines do not always seem to be consistent on this question. For the termination of an open repo, for example, table 5 (p.39) prescribes MODI, while in the example on p.79 this seems to be reported as an ETRM.

In order to ensure consistency, ICMA would recommend the following approach:

ETRM should be used as the Action Type only to report the termination of an open repo and the early termination of a fixed-term repo (including evergreens) where, in both case, settlement of the termination will be for the same day as the notice of termination. The early termination of repos for settlement next day or later should be reported as a modification under the MODI Action Type. This means that both types of report are made on the date on which the contractual obligations and risk exposure of the parties terminate.

Q21. Do you agree with the proposal for reporting collateral updates to SFTs? Please detail the reasons for your response. [para 118, p.30]

We agree with the general guidance provided.

We would like to raise one question regarding the reporting logic of collateral updates (net exposure basis), which is applicable more broadly to any snapshot-based reporting (i.e. also to REUU and MARU reports). When reporting a snapshot we understand that the latest report fully overwrites previously submitted reports. Where an individual collateral component is removed from one day to the other (i.e. its quantity reduced to 0), we understand that there is no need to include this ISIN or cash in the subsequent snapshot report, as the new report would effectively overwrite the previous report, thereby assuming that any collateral component that is not included has been reduced to 0. However, at the industry workshop there was a discussion on the edge case where the whole position is discontinued or terminated or, in the case of reuse, on a given day not a single security has been reused. We understand that there is a problem in this case. If no report is submitted at all, TRs would assume that the latest submitted report would persist. A possible solution would be to submit a “zero report” which would indicate to the TR that the position was reduced to zero across the board (or that there was no reuse at all on that day).

If such an approach is adopted, it would be important for firms to have clear guidance on how to populate a “zero report”. We have discussed this question within the ERCC SFTR Task Force and would suggest the following simplified approach for populating a “zero report” in the case of collateral updates. We suggest that such a report should be limited to two token fields only:

- Field 2.76 (Cash Collateral Amount) = 0
- Field 2.77 (Cash Collateral Currency) = EUR

For reuse, we understand that ESMA already indicated a possible approach in the context of the ISO schema discussions. Having checked against the VRs, we would suggest the following:

- Field 4.6 = CASH
- Field 4.12 = OTHR
- Field 4.13 = 0
- Field 4.14 = EUR

	<p>Furthermore, in order to avoid problems with the reconciliation process, we suggest that TRs should agree among themselves to exclude such “zero reports” from the inter–TR reconciliation process. This would obviously only be necessary where reconciliation is required, ie not for REUU reports for example.</p> <p><i>Q22. 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. [para 119, p.30]</i></p> <p>Paragraph 119 states that the “timeline for reporting “Valuation update”, “Margin update” and “Reuse update” is “the same as for the conclusion of a SFT”. While we agree with this statement for valuation and margin updates, this should not be the case for reuse updates, given that the reuse metrics are settlement driven, as clearly stated in ESMA’s final report on the RTS (para.324). In line with the RTS, ESMA should clarify in the Guidelines that reuse reports will have to be submitted post-settlement, i.e. on S+1.</p>
<p>5.9 Treatment of reports submitted by entities mentioned in Article 2(2) and 2(3) of SFTR (p.31)</p>	<p><i>Q23. 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. [para 120, p.31]</i></p> <p>From our perspective this seems clear. We refer to the responses submitted by TRs for additional comments.</p>
<p>5.10 Identification of a CSD participant (p.31)</p>	<p><i>Q24. 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. [para 121-122, p.32]</i></p> <p>Yes, we agree with the guidance, which is in line with our previous feedback.</p>
<p>5.11. Action types</p> <p>5.11.1 Applicable action types</p>	
<p>5.11.2 Full snapshot versus partial reporting of amendments to SFTs (p.33)</p>	<p><i>Q25. 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. [para 130-136, p.34]</i></p> <p>The ERCC SFTR TF strongly supports proposal A, i.e. in case of changes all fields should be resubmitted. As compared to the current approach set out in the validation rules which requires amended fields and a subset of other fields, proposal A is easier to implement for both and also allows TRs to identify changes in a more straightforward way without need for interpretation (and related potential errors). Importantly, we also understand that proposal A would be in line with EMIR, again facilitating implementation and ensuring consistency across the regimes.</p>
<p>5.11.3 Sequence between action types</p>	<p><i>Q26. Do you agree with the sequences proposed? Please detail the reasons for your response. [para 137, p.36]</i></p>

<p>for the different types of messages (p.34)</p>	<p>We generally agree with tables 2 – 4.</p> <p>As regards POSC, as mentioned before, we do not think that position-level reporting will be applicable to repo trades in practice. However, if it is used, we are not sure why only ‘Error’ and ‘Correction’ are permissible action types following a POSC report. We would expect that all the relevant action types could apply, similar to a new trade reported at transaction level.</p> <p>As regards ETRM, we note that the only permissible action types are EROR and CORR. Can ESMA confirm that a CORR message can be used to resuscitate a UTI after an ETRM?</p>
<p>5.12 Mapping business events to action types and levels (p.37)</p>	<p><i>Q27. 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. [para 138-140, p.40]</i></p> <p>Table 5 on pp.37-40 of the draft Guidelines provides a helpful mapping of business events to action types and levels. However, there are a number of questions that we would like to clarify with ESMA in relation to the table. Most importantly, this includes three more general issues, but also a number of more detailed points. In addition, we also attach to our consultation response a detailed overview table of repo lifecycle events, which the ERCC SFTR TF has put together over the past months and which hopefully provides useful input for ESMA when reviewing table 5 of the draft Guidelines.</p> <p><u>Key issues for clarification:</u></p> <ul style="list-style-type: none"> • Counterparty default or settlement fail: ESMA indicates that this should be reported as an ETRM. We wonder if the inclusion of settlement fails in this context is a misunderstanding. We do not think that this should refer to a (temporary) settlement fail which is usually resolved within a few days and would not lead to a termination of the trade. In this context, we would like confirmation from ESMA that temporary settlement fails would indeed not have any impact on reporting, given that a settlement fail in itself does not terminate or modify the contractual obligations of the parties and therefore has no material impact on risk exposure. <p>In addition, we also note that there are a number of possible responses to a counterparty default set out under contracts like the GMRA, which would not all lead to an immediate termination of the trade.</p> <ul style="list-style-type: none"> • “MODI” vs “ETRM + NEWT”: we would like to validate with ESMA our understanding that the guidance in table 5 for a lifecycle event to be reported as a modification applies only unless there is a <u>contractual agreement</u> between the parties to an early termination of the repo and its replacement with a new repo (eg the Repricing and Adjustment mechanisms under the GMRA). Parties should not use ETRM+NEWT as a routine alternative to MODI. We assume that in the latter case, parties would report closing the old trade (ETRM) followed by a new trade (NEWT) including new UTI. Ideally, a disclaimer should be added to table 5 to confirm this understanding. <p><u>Other comments and points for clarification:</u></p> <ul style="list-style-type: none"> • Change of allocation ahead of settlement: The table says that a re-allocation should be reported as an error (Action Type = EROR) but this contradicts the definition of an error and would seem to misrepresent the situation. We would like to point out that re-allocations

are very common events and would lead to a large number of EROR messages which does not seem to be in line with the purpose of the defined action type. In our view, ETRM + NEWT would be a more accurate representation of the event.

- **Default of the collateral issuer:** The table says default by the collateral issuer should be reported as either a collateral update (Action Type = COLU) or a termination (Action Type = ETRM). But termination of a repo is not a response allowed by the GMRA in this case. Instead the collateral would likely be substituted or margined. The relevant action type should therefore be COLU.
- **Variation margining in non-CCP cleared SFTs:** The table says to use collateral update reports (Action Type = COLU), which is in line with our previous discussions. Furthermore, the related examples (pp.137-144) are on a net collateralization basis (field 2.73 = TRUE) and use field 1.9 Counterparty Side (GIVE/TAKE), which is all in line with our previous proposals. However, there continue to be issues with the way VM reporting is represented. For instance, the examples appear to show variation margin being combined with the collateral of the underlying transactions, despite the fact that the underlying transactions are collateralized trade by trade (excepting most GC financing repos). The related problems are discussed in detail in our response to Q73.
- **Re-rating (fixed rate and spread):** The table says to use modification reports (Action Type = MODI). This is what we have recommended in our sample reports. The table applies to fixed-rate repos and it is not stated whether this includes open repo (see also our response to Q55).
- **Extension:** The table says to use modification reports (Action Type = MODI). This is in line with our understanding.
- **Elimination of termination optionality:** The table says to use modification reports (Action Type = MODI). It is assumed that this event would include the termination of an evergreen.
- **Close-out of open repo:** The table says to use modification reports (Action Type = MODI). However, this seems inconsistent with the example on p.79 which indicates that the termination should be reported as an ETRM. The RTS also specify that ETRM applies to the “termination of an open term SFT termination of an open term SFT or an early termination of a fixed term SFT”.

In order to ensure consistency and to better fit the prescribed timing of the reporting, ICMA would recommend the following approach for the termination of open and the early termination of fixed-term repo:

ETRM should be used as the Action Type only to report the termination of an open repo and the early termination of a fixed-term repo (including evergreens) where, in both case, settlement of the termination will be for the same day as the notice of termination. The early termination of repos for settlement next day or later should be reported as a modification under the MODI Action Type. This means that both types of report are made on the date on which the contractual obligations and risk exposure of the parties terminate.

Q28. Are there any other relationships that would need to be defined? If so, please detail which ones. **[para 138-140, p.40]**

While the table is a helpful reference, it is important that the list is not considered exhaustive. The ERCC SFTR TF has put together a more detailed list of repo lifecycle events, which covers a number of additional events that ESMA might want to take into account for the Guidelines. The repo lifecycle event overview is attached to our consultation response.

5.13.1 Determining counterparty side – General case (p.40)	<p>Q29. <i>Is there any aspect not covered by the ITS on reporting that would require further clarification? Please detail the reasons for your response. [para 141-144, p.40]</i></p> <p>No, from a repo perspective the guidance is clear and sufficient.</p>
5.13.2 CCP-cleared SFTs (p.40)	<p>Q30. <i>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. [para 145-146, p.41]</i></p> <p>Yes, we agree. There is no ambiguity in the case of repo.</p>
5.13.3 Reporting of unsecured lending/borrowing of securities (p.41)	<p>Q31. <i>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. [para 147-148, p.41]</i></p> <p>No comment.</p>
5.14.1 Price and value fields - Loan side in securities lending (p.41)	<p>Q32. <i>Please indicate how frequently is a haircut, margin or any other type of discount/add-on, applied to the loan side of SLB? [para 150, p.41]</i></p> <p>No comment.</p> <p>Q33. <i>Do you agree with the proposed approach? Please detail the reasons for your response. [para 150, p.41]</i></p> <p>No comment.</p> <p>Q34. <i>Do you agree with the proposed approach? Please detail the reasons for your response. [para 151-155, p.42]</i></p> <p>No comment.</p>
5.14.2 Timing of valuations (p.42)	<p>Q35. <i>Do you agree with the proposed approach on timing and use of FX rates? Please detail the reasons for your response. [para 156-160, p.43]</i></p> <p>We agree with most of the guidance on the use of FX rates, but would also stress that the approach set out in paragraph 158 does not reflect current best practice. The applicable FX rates are applied on a firm-wide basis and used for exposure management purposes. They are not transaction specific. We do not expect firms to change applicable FX rates or market prices or indeed any data points that are related to firms' risk and exposure management just to fix a reconciliation break. Reporting of these data points should reflect firms' internal systems. Given the extremely low tolerances defined in level 2, we agree that there will likely be breaks, but the only way to reduce these would be to increase the tolerances to a more realistic level. See also our related responses to Q36 and Q57.</p>

<p>5.14.3 Calculation method for valuations (p.43)</p>	<p><i>Q36. Does ESMA need to provide additional guidance on the reporting of the valuation fields? Please detail the reasons for your response. [para 161, p.43]</i></p> <p>No additional guidance needed. However, we would reiterate the comment made in response to Q35: ESMA seems to indicate that firms will correct the applicable valuations in their internal systems based on reconciliation breaks. This is not appropriate. The underlying data points are firm-wide figures used for exposure management purposes. The only way to reduce reconciliation breaks in relation to the relevant fields would be to increase the tolerances to more realistic levels.</p>
<p>5.15 Reporting of CFI for a security used as collateral (p.43)</p>	<p><i>Q37. 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. [para 162-163, p.44]</i></p> <p>While their coverage is much more comprehensive than for issuer LEIs (see Q41), we would like to point out that CFI codes are not always available either. In order to avoid unnecessary rejections, there should be some flexibility in relation to CFI codes, especially given that ESMA makes it clear in the draft Guidelines that they expect counterparties to use “official sources” for the CFI code, which we understand to be the relevant ANNA database.</p> <p>It would be important to ensure that firms follow a consistent approach in case a CFI code from an official source is unavailable. Assuming field 2.79 remains mandatory, one possibility would be for firms to synthesise the applicable CFI code themselves to avoid rejections. Is this the preferred approach or will ESMA define an alternative fall-back option? The latter would ideally be to make 2.79 an optional field or otherwise to populate the field with a dummy code.</p>
<p>5.16 Backloading (p.44)</p>	<p><i>Q38. 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. [para 164-172, p.45]</i></p> <p>As discussed during ESMA’s industry workshop on 16 July, members of the ERCC SFTR TF have revisited the backloading requirement since the last formal ICMA ERCC feedback submitted to ESMA in December 2018. While a few members still favour backloading their entire book at go-live (and this should be permissible as an option), most have reconsidered their position and we no longer have a consensus in the group. Our sense is that a significant number will not move forward with the full backload at go-live for the following reasons:</p> <ol style="list-style-type: none"> 1. Firms have reflected on the significant additional undertaking of readying their population of open trades for go-live, including creation and assignment of UTI, reference data sourcing and also accurate population of execution timestamp, etc. This has the effect of bringing go-live forward by several months. 2. Some firms have said that they cannot commit to a discretionary backload in advance of go-live of a project of this size. Recognising that both parties need to agree to the backloaded population (paragraph 171b), those firms that are in favour in principle are reluctant to have multiple bilateral agreements in place 3. Related to point 2, a firm undertaking a discretionary backload is putting itself at risk of significant numbers of unpaired trades if their counterparties do not follow suit

	<p>4. In light of the experience of backloading for derivatives under EMIR, some members commented that backloads tend to be most successful when a known eligible population is refined over a period of time, away from the core project, to ensure that everything is in place to meet the obligation deadline</p> <p>5. A backload of the legislated population between 180 and 190 days from go-live will prevent any over-reporting and maximises the time to ensure the data is accurate</p> <p>As a result, where members choose to follow the approach set out in the level 1 SFTR text, i.e. not to backload the whole population on go-live date, it is important to note that the reporting on a net collateralised basis will be skewed for a period after go-live (not just because of back-loading per se but also its phasing in). Members have confirmed that they are not in a position to filter out open trades that have not (yet) been backloaded from the net exposure calculations. From a repo perspective this disclaimer applies mainly to the reporting of variation margin. The skew will naturally decrease over time as the proportion of unreported trades decreases. This will happen as new trades come into reporting scope and old, unreported, trades close.</p> <p>From previous discussions with ESMA we understand that as the Level 1 text prevails over any further guidance, firms will always be able to backload according to the approach set out in the Regulation. As mentioned, we understand that most market participants are planning to follow this approach. Entities most likely to diverge and prefer to backload all (or part of) their book on the initial reporting go-live date would seem to be certain CCPs as well as agent lenders on the SLB side. As backloaded trades will be matched, there will obviously be reconciliation breaks where counterparties choose to follow a different backloading approach. Apart from that we do not expect any major issues, but the industry will have further discussions in order to ensure appropriate coordination and to avoid any practical implications.</p>
<p>5.17 UTI generation and structure (p.45)</p>	<p><i>Q39. What other aspects with regards to the UTI have to be clarified? Please detail the reasons for your response. [para 173-179, p.47]</i></p> <p>One issue that we raised previously is the case where a UTI is not generated as prescribed by SFTR (or agreed on a bilateral basis). ESMA's Final Report on the RTS covers the scenario where the counterparty responsible for generating a UTI fails to share it within the reporting deadline (paragraph 246). ESMA clarify that they disagree with the proposal that in such a case "the other counterparty should be allowed to generate its own UTI in order to report" pointing to "significant matching issues as well as potentially in the duplicative reporting, in case the reports with the wrong UTIs are not cancelled". While we recognise that the "rules regarding the responsibility to generate and share the UTI in a timely manner" are clear, we urge that guidance be provided on applicable fall-back options in case the relevant counterparty does not generate and share the UTI on time or that parties be allowed to negotiate their own safeguards as part of any bilateral agreement. Are we correct to assume that timeliness of reporting should be given priority in this scenario?</p> <p>Paragraph 177 of the draft Guidelines says that agreement between the counterparties on who should generate UTIs is a fall-back option, which is surprising considering that this option is in fact on top of the decision tree for UTI generation (see p.46). The statement also seems to contradict para.231 (p.81), which says "As agreed by the counterparties or otherwise in accordance with the generation logic in Article 3(2) of the ITS on reporting".</p> <p>As a more general remark, some members have pointed out that they would welcome more detailed guidance in relation to the structure of the UTI, ideally in the form of a defined algorithm to create UTIs. We acknowledge that such guidance would ideally have to be agreed at global level in the context of the FSB's work in relation to UTIs.</p>

5.18 Identifying and reporting on beneficiaries (p.47)	<p><i>Q40. Are there any other instances that need to be clarified? Please elaborate on the reasons for your response. [para 180-181, p.47]</i></p> <p>No. We note that this field is now optional according to the latest validation rules and is not required where the principal is also the beneficiary, which will be the case for the vast majority of repos. The only exception we are aware of is an agency repo scenario that involves a trust (who would be reported as beneficiary).</p>
5.19 Identification of issuer of securities and securities (p.47)	<p><i>Q41. Please provide the relative volume of transactions for which issuer's LEI (of securities used as collateral) or ISIN is not available in principle. [para 182-184, p.48]</i></p> <p>As discussed repeatedly, most recently at ESMA's industry workshop on 16 July, the number of securities used as collateral in SFTs that do not possess an issuer LEI is very significant. This is illustrated by the data analysis that we previously shared with ESMA [we refer to ISLA's response which includes this data]. The extent of the issue has also been forcefully confirmed by the FSB's recent "Thematic Review on Implementation of the Legal Entity Identifier" published in May 2019. The Report analyses LEI coverage across the 25 FSB jurisdictions and finds significant gaps. For example, page 56 of the report provides a useful overview table of LEI coverage for securities issuers across the 25 jurisdictions. This shows that on aggregate only 55% of all financial instruments in scope have an LEI code (representing 78% of outstanding amounts) and that only 11% of all firms that are issuing securities have so far obtained an LEI. This is clearly not a sufficient basis for mandating the reporting of LEI codes at an instrument level. In practice, the problem is made worse by the inclusion of many of these securities in large baskets from which it would be impracticable to remove them.</p> <p>The FSB report notes the significant impact of legislative requirements on LEI coverage, in particular MiFID II in Europe, and also notes the significant coverage among financial counterparties. However, it is important to keep in mind that there are fundamental differences between mandating the use of counterparty LEIs, as it was done under MiFID II for example, and mandating the use of issuer LEIs as proposed under SFTR. Reporting firms under MiFIR are all within the jurisdiction of the EU, whereas many issuers are not. Furthermore, firms that use securities as collateral have no contractual relationship with the issuer of the securities. As it has been suggested that taking a strict approach on issuer LEIs should provide economic incentives for issuers to obtain an LEI code, we would also like to stress that the resulting disruptions from such an approach are completely disproportionate as compared to any (theoretical and questionable) benefits. Securities without issuer LEIs would migrate to other financial centres. Given the numbers involved, such a migration would seriously damage the liquidity and competitiveness of the EU market. Furthermore, the argument that there are plentiful supplies of alternative collateral is specious in that many SFTs are securities-driven, so there is simply no alternative. Inability to use certain securities in SFTs would limit the ability of EU firms to finance or cover short positions in these securities and therefore manage their funding and risk, and thus their ability to offer financial services to many customers.</p> <p>Consequently, mandating field 2.93 is impractical and would lead to a very significant number of rejections (which is inevitable as SFTs with longer terms start to fall into scope of the backloading provisions). While the figures provided already illustrate this well, it is important to note that the relative number of trades that will fail to pass TR validation due to a lack of valid issuer LEI will be significantly higher considering that many SFTs include multiple lines of collateral securities.</p> <p>The SFTR reporting framework needs to take account of this fact and provide the necessary flexibility in relation to the reporting of issuer LEIs. In our view, field 2.93 should be made optional (i.e. mandatory where available), at least initially and until the LEI coverage on a global scale is more comprehensive. The only viable alternative would seem to be to provide counterparties with a specific and valid LEI code that can be used in cases where no issuer LEI code is available from the relevant GLEIF database. The use of this code should be strictly limited</p>

	<p>to cases where no issuer LEI code is available and this could be checked and enforced by NCAs ex-post. Ideally, such code could be obtained by ESMA itself, which would ensure consistency and would give authorities a very clear view on remaining gaps in global LEI issuance and an appropriate tool for applying peer pressure at a global level on jurisdictions that still lag in the adoption and enforcement of LEI codes. We would like to point out that it is a mutual interest of reporting firms and regulators to find a solution to the problem resulting from the insufficient issuer LEI coverage. A significant number of rejections not only means operational burden and compliance issues for firms, but also limited visibility for regulators given that a significant share of the reports will not be available.</p> <p>The coverage of ISIN codes is much more comprehensive compared to issuer LEI and also to a lesser degree CFI codes. However, there are instances where an ISIN code is not available. It would therefore be important for ESMA to specify how firms are expected to complete these fields in case no code is available from the relevant official databases, although the clear priority should be given to issuer LEIs.</p>
<p>5.20 Reporting in the phased-in period (p.48)</p>	<p><i>Q42. Do you agree with this approach? What other aspects need to be considered? Please elaborate on the reasons for your response. [para 185-188, p.48]</i></p> <p>Yes, we generally agree with the proposed approach. In paragraph 186, ESMA states that reports cannot be reconciled during the transition period where only one of the parties is in scope. Just to clarify, we understand from the TRs that they are unable to distinguish parties based on their applicable reporting go-live date and will attempt in all cases to pair and match reports during the phase-in period.</p>
<p>6. SFTR Tables of fields</p>	
<p>6.1 Table 1 Counterparty data</p>	
<p>6.1 Table 1 Counterparty data (p.50)</p>	<p><i>Q43. 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. [para 193-194, p.51]</i></p> <p>No.</p> <p><i>Q44. 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. [para 195-211, p.72]</i></p> <p>Yes. As a minor comment, we noticed that scenario 6.1.10 is currently not included in the overview table 6.</p>
<p>6.2 Table 2 Loan and Collateral Data</p>	
<p>6.2 Table 2 Loan and Collateral Data (p.72)</p>	<p><i>Q45. 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. [para 212-227, p.80]</i></p>

6.2.1 Reporting of action types at transaction and position level (p.73) As a general comment, we agree with ESMA's statement in paragraphs 85 and 86 that position level reporting is not an option for CCP-cleared repo, based on the defined conditions. Consequently, the examples should put less emphasis on the related scenarios and focus more on scenarios that are of practical relevance.

6.2.2 Loan data

6.2.2.1 Reporting of UTI (p.81)

6.2.2.2 Reporting of event date (p.81)

Q46. 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. [para 233-234, p.82]

The reporting of field 2.3 (event date) is not straightforward and raises a number of issues and questions.

ESMA's Validation Rules define the Event Date (Table 2, field 3) as the "date on which the reportable event...took place". In respect of reports with the Action Types for collateral updates (Action Type = COLU), re-use updates (Action Type = REUU) and margin updates (Action Type = MARU) --- but not new transactions or the first re-use reports and margin reports (Action Type = NEWT), modifications (Action Type = MODI) and terminations (Action Type = ETRM) --- the RTS also defines the Event Date as "the date for which the information contained in the report is provided". However, in some cases it is not clear whether the date referred to is the date of the contractual decision or the date of implementation of the decision (ie sometimes called the effective date).

In summary, we understand and recommend that "event date" for the different applicable action types should be completed as follows. Can ESMA confirm that this is correct?

Action Type	previous event date	contractual or transaction or trade or notice or decision date	implementation or settlement or effective date
COLU			X
MARU			X
REUU			X
MODI		where the event is termination in the future	X
ETRM			where termination is settled on the same day
NEWT		X	
CORR	X		
EROR		N/A --- no Event Date for this Action Type	

6.2.2.3 Reporting of cleared / non-cleared SFT (p.82)

Q47. Do you agree with the approach to reporting clearing? Please detail the reasons for your response and include a reference to the specific table. [para 235-245, p.89]

Our understanding in relation to the reporting of prior repos and report tracking number (RTN) is as follows. It would be helpful if ESMA could validate our assumptions.

Reporting of prior repos:

As per ESMA’s definition, a prior repo exists as a precursor to all repos which a CCP clears by novation rather than open offer. Therefore, a prior repo does not have to be reported if it was cleared by a CCP on an open offer basis. Nor does a prior repo have to be reported (even though it is assumed to exist) for a repo executed on a trading venue and cleared by a CCP on the same day (T+0).

In this context, we would remark that the guidance in relation to repos cleared on an open offer basis does not seem to be reflected in the validation rules. Field 2.2 (RTN) is conditionally mandatory for cleared trades (2.5=TRUE), irrespective of whether this is done by open offer or novation. Can ESMA clarify if and how field 2.2 should be populated for repos cleared on an open offer basis?

Reporting of RTN:

In the case of a repo executed on a trading venue and cleared on the same day (T+0), although its prior repo does not have to be reported as a new transaction by the members of a CCP who agreed it, the RTN for that prior repo (its UTI) still has to be included in the reports of the cleared repos by the members. That RTN has to be generated by the trading venue.

If a repo is not executed on a trading venue or is not cleared on the same day (T+0) or both, the prior repo does have to be reported as a new transaction by the original counterparties and then terminated and replaced by cleared repos. And in their reports of the cleared repos, the counterparties have to report the RTN for the prior repo (its UTI). The RTN for a prior repo not executed on a trading venue will probably be generated by the counterparties or the CCP but this choice should be made according to the decision tree provided by ESMA (see Final Report, pages 77-78, Figure 1).

A CCP does not have to include the RTN in its reports of cleared repos

Summary table:

execution venue	date of clearing	is there a prior repo?	prior repo to be reported?	RTN to be reported?	RTN to be generated by:
trading venue	open offer (T+0)	no	no	No	n/a
	same day (T+0) novation	yes		by both parties but not CCP	trading venue

	<table border="1"> <tr> <td data-bbox="461 132 674 236"></td> <td data-bbox="674 132 884 339">not same day</td> </tr> <tr> <td data-bbox="461 236 674 443">OTC</td> <td data-bbox="674 339 884 443">same day (T+0)</td> </tr> </table>		not same day	OTC	same day (T+0)		by both parties		see ESMA decision tree	
	not same day									
OTC	same day (T+0)									
<p>6.2.2.4 Trading venue (p.89)</p>	<p><i>Q48. 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. [para 246-251, p.92]</i></p> <p>Paragraph 248 confirms ESMA’s intention to align field 2.8 with the trading venue categories in MiFID II. This means that voice-brokers (where they are OTFs) are no longer to be considered part of the OTC market. Basically, only direct bilateral phone and electronic messaging negotiations are OTC. We note that this has broader implications, in particular in relation to the generation of UTIs based on the ESMA decision tree.</p> <p>Paragraph 250 states that field 2.8 should be populated as ‘XOFF’ where an SFT was concluded off-venue but then brought into the rules of a trading venue (RM, MTF, OTF). We welcome this clarification and agree with the suggested approach.</p> <p>We would welcome further guidance from ESMA on the treatment of third country trading venues under SFTR. Is the definition of trading venue in SFTR restricted to EU-authorized trading venues? In case an in-scope counterparty concludes an SFT on a third-country trading venue, how should field 2.8 be populated and what does this mean in terms of generation of both UTI and RTN (in case of CCP-clearing) given that third-country venues would be outside the scope of SFTR obligations?</p>									
<p>6.2.2.5 Master agreement section (p.92)</p>	<p><i>Q49. 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. [para 252-256, p.94]</i></p> <p>The guidance in relation to master agreements is generally clear. We would just highlight that there are likely additional agreements (other than BIAG, CSDA and OTHR) for which field 2.11 is not applicable. It could make sense to make 2.11 more generally an optional field (to be filled in only where applicable).</p> <p>The example in table 57 explains the population of the master agreement fields for CCP-cleared trades. Can ESMA confirm if the proposed response in field 2.10 (“CCPClearingConditions”) should be considered as standard wording or if the wording should be adapted to individual CCP agreements (with standard wording provided by each CCP)?</p>									

	A minor comment in relation to the example provided in paragraph 253: There is no 2017 version of the GMRA. The latest version of the GMRA is the GMRA 2011.
6.2.2.6 Conclusion and start of the transaction (p.94)	<p><i>Q50. 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. [para 257-258, p.96]</i></p> <p>Yes, we agree.</p>
6.2.2.7 Term of the SFT (p.96)	<p><i>Q51. 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. [para 259-262, p.98]</i></p> <p>As explained previously, in a simple fixed-term repo with no embedded early termination option, the counterparties do not have an automatic right to terminate early or amortize. Field 2.17 and 2.18 should therefore not apply and this is recognised in the updated validation rules which specify that both fields are mandatory only for open repos, evergreens and extendibles. Confusingly, the example in table 61 shows a fixed term repo with minimum notice period. This is possible but, as explained, does not represent a standard scenario.</p> <p>On field 2.16 (Minimum Notice Period): in addition to open repos, evergreens and extendibles, the field should also cover fixed-term repos with a termination option (as illustrated in table 61).</p> <p>In relation to the use of field 2.17 (Earliest Call-Back Date): In the case of open repo (including open evergreens), we assume that this field does not need to be updated every day that the repo remains open. Reporting of a published fixing by hundreds or thousands of parties would simply be “noise”. We therefore suggest that field 2.17 should only apply to NEWT reports. In addition, we assume that the field does not apply to extendibles (since they are extended, not called back). Can ESMA confirm that this is correct? In order to avoid duplication and unnecessary inconsistencies, we suggest that the use of field 2.17 should be limited to fixed-term repos with termination options.</p>
6.2.2.8 Termination optionality (p.98)	<p><i>Q52. 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. [para 263, p.100]</i></p> <p>No, we agree with the description.</p>
6.2.2.9 Collateral arrangements (p.100)	<p><i>Q53. Which of these approaches do you favour for reporting general and specific collateral? Please detail the reasons for your response. [para 264-267, p.101]</i></p> <p>The ICMA ERCC has a strong preference for a more restrictive definition of general collateral, i.e. ESMA’s option 2 described in paragraph 265. In our view this is the only workable approach. As ESMA points out, anything closer to option 1 would be very problematic in terms of reconciliation. The GC repo rate is an inexact concept (the GC repo rate is in fact a band of rates, often assumed to be 10 basis points wide, within which GC rates vary according to delivery methods and optionality). In line with ESMA’s proposal, we suggest that only repos transacted on GC facilities on ATS and/or managed by a tri-party agent should be reported as general collateral.</p> <p>This would include repos that are:</p>

	<ul style="list-style-type: none"> traded on what are advertised as GC facilities provided by an automatic trading system (ATS), including GC financing facilities such as Eurex EGCP and LCH's €GC Plus and £GC (which are cleared by a CCP and managed by a tri-party agent); not traded on an ATS but managed by a tri-party agent. <p>In all these cases, the seller or its agent can allocate collateral from “a relatively wide range of securities meeting predefined criteria”, which would be in line with ESMA’s definition of GC.</p> <p>So-called bilateral GC trades draw on inexact and informal sets of securities and the buyer can refuse what is proposed as collateral, even if the collateral-giver believes the proffered securities meet the general understood definition of GC. In other words, for clarity, we believe GC should be reported where there is an explicit list of eligible collateral.</p> <p><i>Q54. 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. [para 268-270, p.103]</i></p> <p>Yes, we agree.</p> <p>In the context of DBV, can ESMA confirm that the triparty field (2.14) should be filled in with Euroclear’s LEI if the DBV indicator is ticked, given that DBV it is a triparty facility?</p>
6.2.2.10 Fixed or floating rates (p.104)	<p><i>Q55. 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. [para 271-279, p.107]</i></p> <p>Table 72 in the draft Guidelines illustrates how a floating-rate adjustment should be reported in fields 2.35 and 2.36. What this doesn’t show is the cause of the adjustment. In particular, in the case of floating rate repo linked to an interest rate index, we would like to ask ESMA to confirm our assumption that only modifications of the spread to the index are reportable and not the scheduled and published fixings of the index itself, which obviously do not constitute a modification of the contractual terms of the repo. So, for example, a repo priced at EONIA plus 5 basis points would not require a MODI report for each day on which EONIA is fixed, but only when the spread to EONIA would be changed. Logically, the actual rate would also not have to be reported (in the field Adjusted Rate) even on the first date of the SFT.</p>
6.2.2.11 Repo and BSB/SBB principal amounts (p.107)	<p><i>Q56. 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. [para 280, p.108]</i></p> <p>We don’t see any issues with the principal amount fields.</p> <p>On a related issue, we would like to reiterate our concerns in relation to the reporting of the BSB price, noting that there is currently no field to accurately capture this. The repo rate (fields 2.23 or 2.25) is not applicable for BSB and field 2.49, which is now mandatory for BSB is not appropriate to capture the price either as this is only the spot price (duplicating field 2.87). See our response to Q5.</p>
6.2.2.12 Securities (p.108)	<p><i>Q57. Do you agree with the approach regarding reporting fields 2.51 and 2.90? Please elaborate on the reasons for your response. [para 281-289, p.109]</i></p>

	<p>ESMA's draft Guidelines require that (paragraph 283):</p> <ul style="list-style-type: none"> • Parties should rely on their internal assessment of the credit quality of collateral. This assessment can take account of but should not place “mechanistic reliance” on external credit ratings. • As part of the process of agreeing the credit quality of collateral, the parties should agree the classification of the collateral on the six credit quality steps used to map the ratings provided by External Credit Assessment Institutions under the Capital Requirements Regulation (575/2013). • In the case of lack of agreement, the parties should use the lowest rating proposed <p>ICMA members have expressed concerns with the proposed approach. The principal reason for this is that members are uncomfortable with reporting data they disagree with. Further, as SFTR does not require usage of a common credit reference agency, market participants are free to choose. Broadly members are uncomfortable with relying on their counterparty's data, given they have no oversight over its provenance and intrinsically disagree with it, having chosen an alternative source.</p> <p>As pointed out in our response to questions 35-36, members think it most appropriate that firms report their own records. Therefore, there will be breaks on these fields which members feel presents the most accurate picture to anyone reviewing the reports. Further, in order to reduce unnecessary noise in reports, members again request that these fields are made non-reconciling – but understand that will require a revision to RTS 2018/8332.</p> <p><i>Q58. 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. [para 290-299, p.113]</i></p> <p>Yes, we agree.</p>
<p>6.2.2.13 SFTs involving commodities – commodities lending (p.114)</p>	<p><i>Q59. 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. [para 300-302, p.114]</i></p> <p>No comment.</p>
<p>6.2.2.14 Cash rebate SLB (p.115)</p>	<p><i>Q60. 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. [para 303-306, p.116]</i></p> <p>No comment.</p>
<p>6.2.2.15 Non-cash collateral SLB (p.116)</p>	<p><i>Q61. 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. [para 307, p.117]</i></p> <p>No comment.</p>

6.2.2.16 Margin lending and short market value (p.117)	<p>Q62. 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. [para 308-314, p.120]</p> <p>No comment.</p>
6.2.3 Collateral data 6.2.3.1 Uncollateralised SLB 6.2.3.2 Collateralization (p.121)	<p>Q63. Do you agree with the approach to reporting collateralisation? Please detail the reasons for your response and include a reference to the specific table. [para 319-329, p.125]</p> <p>Yes, the approach is in line with our own assumptions.</p> <p>As regards the use of NTAV, can ESMA confirm that this can be used also: (i) where a collateral allocation is unknown but the allocation will not be from a definitive basket and (ii) where the allocation of collateral from a basket will be known in time to report by T+1 but a party wishes to report the loan data as soon as possible before the allocation is known?</p>
6.2.3.3 Cash collateral	<p>Q64. 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.</p> <p>Yes, we agree.</p>
6.2.3.4 Security collateral fields (p.126)	<p>Q65. Do you agree with the proposed approach? Please detail the reasons for your response. [para 331-332, p.126]</p> <p>We agree with ESMA that field 2.88 (collateral market value) should be provided exclusive of haircut, i.e. before applying any haircut. This would be more straightforward and in line with market practice. It would also be superfluous to include haircut given that it is separately reported.</p> <p>Q66. Do you agree with the proposed approach for calculating collateral haircuts or margin? Please provide justification for your response. [para 333-340, p.131]</p> <p>We would like to point out that ESMA included in paragraph 333 the formula to calculate Initial Margin, not a haircut. This is despite the fact that the validation rules define field 2.89 as a haircut (i.e. the percentage discount of the purchase price of a repo relative to the initial market value of the collateral).</p> <p>Q67. Do you agree with the proposed approach for reporting collateral type field? Please detail the reasons for your response. [para 342-344, p.131]</p>

Reporting Counterparties are required to classify and report collateral given or received in repos using the eight-category taxonomy issued by the FSB in its Securities Financing Global Data Standards. We note that most of the categories in the taxonomy have not (yet) been detailed by the FSB, which is problematic under SFTR as field 2.94 is a matching field and five of the eight categories are only loosely defined and overlap. The FSB established a Data Management subgroup under its Data Experts Group to work on, among other things, “identification of the codes for classification; development of the detailed guidelines and definitions” with the aim of producing “implementation guidelines” but these have yet to appear.

In the absence of standardised FSB definitions, we suggest that field 2.94 should be optional. The alternative would be not to require this field to be reconciled in the interim, but we understand that this would require changes to the RTS. As soon as there are any standardised definitions, field 2.94 could be made mandatory, as we understand that this is a core field of the global data aggregation.

Q68. Do you agree with the proposed approach for reporting Availability for collateral reuse? Please detail the reasons for your response. [para 345, p.132]

In paragraph 345, ESMA helpfully clarifies that field 2.95 = TRUE if field 2.20 Method Used to Provide Collateral = TTCA or SIUR, even where the reporting party faces “operational/technical constraints”. We assume that this also applies to regulatory constraints, such as the ones faced by UCITS funds, who are prohibited by the UCITS Directive from re-using collateral. In this case, we understand that field 2.95 should equally be populated as TRUE. Can ESMA confirm that this is indeed correct and that field 2.95 only reflects the contractual rights of the buyer?

Q69. 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. [para 346-347, p.132]

As pointed out in our response to Q41, the number of securities used as collateral in SFTs that do not possess an issuer LEI is significant. Mandating field 2.93 is therefore impractical and would lead to a very significant number of rejections. While the figures provided already illustrate this well, it is important to note that the relative number of trades that will fail to pass TR validation due to a lack of valid issuer LEI will be significantly higher considering that most SFTs include multiple lines of collateral securities.

The SFTR reporting framework needs to take account of this fact and provide the necessary flexibility in relation to the reporting of issuer LEIs. In our view, field 2.93 has to be an optional field (i.e. to be included only where available), at least initially and until the LEI coverage on a global scale is more comprehensive. An alternative would be to provide reporting firms with a specific and valid LEI code that can be used in cases where no issuer LEI code is available from the relevant GLEIF database.

Q70. Do you agree with the proposed approach for reporting plain vanilla bonds as collateral? Please detail the reasons for your response. [para 348-349, p.134]

We understand from the validation rules that field 2.74 (Value date of collateral) is only applicable in case of net exposure collateralisation. As table 94 seems to present a standard repo which we would expect to be collateralised at a trade-level, can ESMA explain why field 2.74 is included in the report?

We would also question the relevance of field 2.74 for repo more generally, including in case of net exposure collateralisation. As explained in our response to Q73, and as demonstrated by ISLA at the industry workshop, the field does not add any value for net exposure collateralisation reporting for repo and simply introduces potential for breaks. LEIs and Master Agreement Type are adequate for linking net collateral to the underlying set of repos. Firms will not have more than one of the same agreement per counterparty: to do otherwise would reduce the scope of netting in default and introduce contractual complications.

Q71. Do you agree with the proposed approach for reporting perpetual bonds as collateral? Please detail the reasons for your response. [para 350, p.135]

Yes, we agree.

Q72. Do you agree with the proposed approach for reporting main index equities as collateral? Please detail the reasons for your response. [para 351, p.137]

No comments.

Q73. 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. [para 352, p.139]

Following up on our previous discussions with ESMA on this issue, we set out below our understanding of how we suggest bilateral variation margining should be reported under SFTR. This includes a description of the general approach and related issues, as well as some more specific comments in relation to the relevant examples provided by ESMA as part of the draft Guidelines. We also refer to our previous submissions on this topic to ESMA, including the detailed bilateral VM example, as well as the most recent discussion on this topic at the industry workshop on 16 July. As an additional illustration of our suggested approach, we also added a related sample report for bilateral VM to the list of SFTR sample reports which we have attached to this consultation response (see tab 3.3 of the sample report document).

General approach:

ESMA have confirmed in the draft Guidelines that variation margins on repos not cleared by a CCP should be reported as a collateral update (Action Type = COLU), which is in line with our previous discussions on this topic.

Therefore, we understand the reporting logic to work as follows:

If variation margin is being called against individual repos (which is typical of tri-party repos and structured transactions which the parties have expressly agreed to margin separately from the rest of the repos between them), variation margins should be reported as part of the normal end-of-day collateral update report linked to the relevant transaction by its UTI.

If, as is more usual, variation margin is being called against the net exposure of a portfolio of repos --- in other words, variation margin represents collateralization on a net basis --- an extra end-of-day collateral update report will be required for each daily variation margin, i.e. one report per counterparty and master agreement, which should include:

- *Table 2, field 73, Collateralization of Net Exposure = TRUE*

and should be linked to the underlying transactions by the following fields:

- *Field 2.9 (Master Agreement Type)*
- *Fields 1.3 & 1.11 (LEIs of the parties)*

The validation rules also currently require as a linking field 2.74 (*Value Date of the Collateral*). However, this field is not necessary in the context of repo and should be removed as it adds no value and is likely to create reconciliation breaks. We understand that this field was initially intended for pre-paid collateral, which is a concept that does not exist for repo. If it is not possible to remove, we recommend that field 2.74 should be made optional for repo and should in any case not be used as a linking field. As noted above, firms will not have more than one of the same agreement per counterparty: to do otherwise would reduce the scope of netting in default and introduce contractual complications.

In order to **indicate whether variation margin is being given or received**, ESMA suggests in the relevant examples that field 1.9 (*Counterparty Side*), should be used. While we had previously argued that this field should indeed be applicable to collateral updates, upon further reflection we have revisited this suggestion. We do not believe that including field 1.9 in the collateral update message is the most straightforward approach to indicate whether margin has been given or received. This is because both parties could have given each other variation margin in the same asset and could hold these assets at the same time. Variation margin is not returned to the party who gave it unless the latter calls back that margin when it makes a subsequent margin call on the other party. In view of this possibility, variation margin needs to be reported with a positive arithmetic sign for margin received and still held, and a negative arithmetic sign for the same asset given as margin and not yet called back. It is recommended that the arithmetic signs be applied only to field 2.83 (*Collateral Quantity or Nominal Amount*), for margin securities and field 2.76 (*Cash Collateral*) for cash margin, in order to simplify reporting. We also propose that, where both parties are simultaneously holding the same asset as VM, only the net should be reported. This is consistent with VM procedures under the GMRA and other repo agreements. It will still be necessary to use arithmetic signs because parties may be net long of one type of asset and net short of another in their VM account.

Adopting this approach would allow counterparties to report bilateral VM consistently in a single (per portfolio) net exposure collateral update report. Field 1.9 would in turn not be necessary for collateral update reports as the arithmetic sign already indicates the direction. It would indeed be preferable to remove field 1.9 as allowing for both GIVE/TAKE and a negative arithmetic sign risks introducing breaks as it allows for different combinations of both.

Specific comments related to the VM examples provided in the draft Guidelines:

In addition to the general reporting logic for non-CCP VM, members have pointed out a number of issues with the three relevant examples provided by ESMA as part of the draft Guidelines [tables 97-99 on pp.137-141]. The examples do not seem to accurately reflect VM practicalities for repo. For example, even if the examples are marked as net collateralization, we noted that the VM still involves increasing/reducing the collateral of an individual trade (although this might be a result of the very simplified example). We would again reiterate that the (net exposure) VM collateral should be considered completely separate from the (trade-based) collateral of the underlying transactions. Also, neither of the examples includes any cash component, which is a likely possibility in bilateral VM for repo and should be possible. It would be helpful if ESMA could add an example to the final Guidelines to illustrate that this is indeed the case.

Q74. 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. [para 353, p.141]

	<p>See our response to Q73.</p> <p><i>Q75. 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. [para 354-356, p.144]</i></p> <p>See our response to Q73.</p> <p>There seem to be some issues with the arithmetic in this example which might need to be corrected: Increasing 100 million DE bonds at 102.00 and a 2% haircut to 101 million at 103.3 with the same haircut is an increase in MV of 2.286. But the offsetting move of 2 million FR bonds at 103.00 and a 2% haircut is worth 2.02.</p>
6.2.3.5 Prepaid collateral (p.144)	<p><i>Q76. Do you agree with the proposed approach for reporting prepaid collateral? Please detail the reasons for your response. [para 357-358, p.146]</i></p> <p>As explained in our response to Q73, pre-paid collateral is not a relevant concept in the case of repo. Field 2.74 (Value Date of Collateral) therefore adds no value for net exposure collateralisation reporting for repo and simply introduces potential for breaks. It should be made optional for repo and not be used as a linking field.</p>
6.2.3.6 Portfolio of Cleared transactions (p.147)	<p><i>Q77. Do you agree with the proposed approach for reporting portfolio code? Please detail the reasons for your response. [para 359, p.147]</i></p> <p>Yes, we agree.</p>
6.3 Margin data	
6.3.3 Reporting of margin information	<p><i>Q78. 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. [para 363, p.149]</i></p> <p>It is our understanding that VM, IM and excess collateral should each be reported as a single amount in one currency. Can ESMA clarify if the currency of denomination should be the base currency selected by the CCP (or in case of clearing clients the Clearing Member) or, in line with EMIR, the predominant currency of the outstanding balances?</p>
6.4 Reuse data, cash reinvestment and funding sources	
6.4.1 Collateral re-use (p.151)	<p><i>Q79. 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? [para 365-374, p.152]</i></p>

	<p>ESMA specifies in the draft Guidelines that collateral received through SFTs from members of the ESCB should be excluded from re-use calculations [para 372, p.152]. While we acknowledge that this approach would seem to be in line with the guidance issued by the FSB, we would still reiterate that this is far from ideal as it is cumbersome to implement and skews the results of the calculation producing much less meaningful data from a regulatory perspective as these transactions also include commercial SFTs and contribute to system leverage (and are subject to leverage and liquidity ratios). While we understand ESMA's constraints in relation to the approach adopted in SFTR, we would ask ESMA to raise the issue at a global level with the FSB.</p> <p>The reporting of reuse on behalf of small NFCs remains problematic. In order to correctly apply the reuse formula, the FC responsible for the reporting will have to rely on additional data points from the small NFC which can be commercially sensitive. The alternative would be for the small NFC to calculate the formula themselves and pass on the resulting estimate to the FC. Further guidance from ESMA on this specific question would be welcome. We note that tables 106 and 107 in the draft Guidelines cover this scenario. However, the examples do not specify who calculates the estimate or how the additional data points are shared/obtained. There is also a question whether a small NFC using more than one FC will have its re-use reports made several times by the different FCs.</p> <p>On a more general note, in line with our previous comments, we agree with ESMA that “market participants do not usually distinguish between their own assets and the collateral they have received” and will therefore in almost all cases report reuse as an estimate based on the formula provided. However, we also understand that a few (smaller and less active) market participants may be in a position to report actual reuse and might find this easier from an operational point of view. We therefore recommend that ESMA maintains this as an alternative possibility.</p>
<p>6.4.2 Cash reinvestment (p.157)</p>	<p><i>Q80. Do you have any comments on cash collateral reinvestment, and do you agree with the scope? [para 380-382, p.157]</i></p> <p>At the industry workshop on 16 July there was a short discussion about the applicability of cash reinvestment reporting for cash variation margin for repo. We note that the final RTS (Delegated Regulation 2019/356) clearly state that the related fields 4.12-14 are not applicable to repo (see Table 4 on <i>Re-use, cash reinvestment and funding sources data</i>). As variation margining is inherently linked to the underlying repo trades, we understand that cash reinvestment reporting does not apply to cash variation margin for Repo. Can ESMA please confirm that this assumption is correct?</p>
<p>6.4.3 Funding sources</p>	<p><i>Q81. 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. [para 364-388, p.163]</i></p> <p>No comment.</p>
<p>7. Rejection feedback</p>	
<p>7. Rejection feedback (p.163)</p>	<p><i>Q82. 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. [para 389-396, p.165]</i></p>

	No comment.
8. Reconciliation feedback	
8. Reconciliation feedback (p.165)	<p><i>Q83. 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. [para 397-401, p.167]</i></p> <p>No comment.</p>
9. How to provide information to authorities	
9.1 Timelines to setting up data access (p.167)	<p><i>Q84. What other aspects need to be considered to make the process more efficient? Please elaborate on the reasons for your response? [para 402-403, p.167]</i></p> <p>No comment.</p>
9.2 Operational arrangements for data access (p.167)	<p><i>Q85. 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? [para 404-421, p.173]</i></p> <p>No comment.</p>