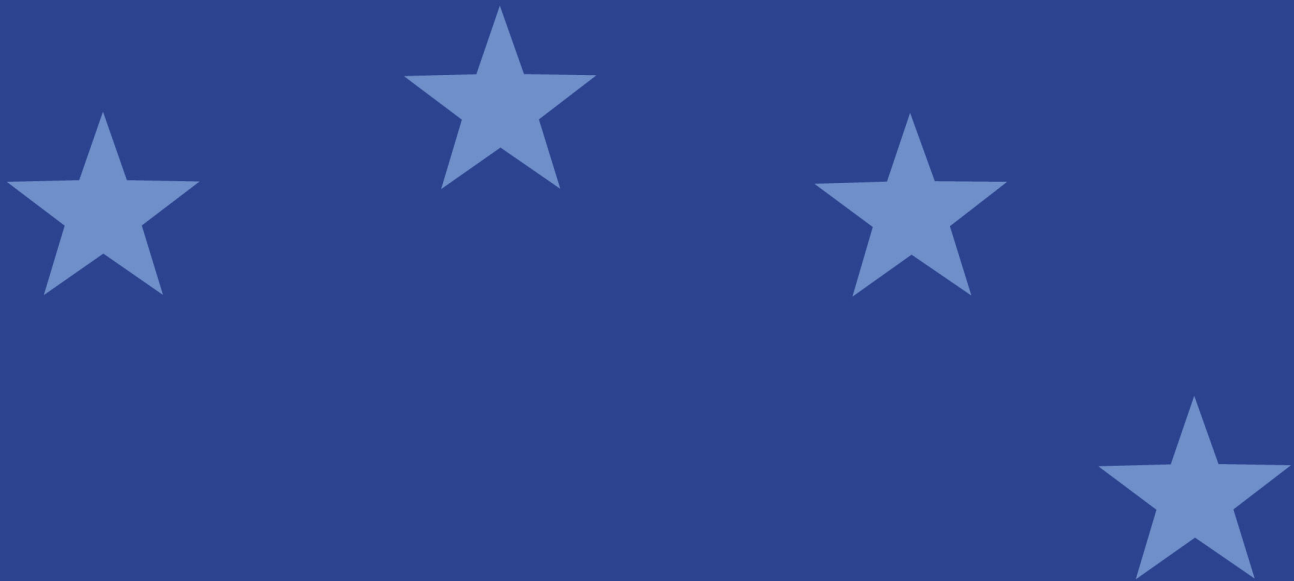


# Response Form to the Consultation Paper

**Guidelines for reporting under Articles 4 and 12 SFTR**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **29 July 2019**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_RSFTTR\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_RSFTTR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_RSFTTR\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading "Your input – Open consultations" → "Consultation on Position limits and position management in commodities derivatives").

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation. In particular, responses are sought from financial and non-financial counterparties to securities financing transactions, tri-party agents, agent lenders, central counterparties (CCPs) and trade repositories (TRs), as well as from all the authorities having access to the TR data.

## General information about respondent

Name of the company / organisation	Commodities Working Group (CWG) of the Global Financial Markets Association (GFMA)
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

## Introduction

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_RSFTTR\_1>

The Global Financial Markets Association (GFMA)<sup>1</sup> Commodities Working Group (CWG) welcomes the opportunity to comment on the European Securities and Markets Authority (ESMA) Consultation on Guidelines for reporting under Articles 4 and 12 SFTR and in particular the opportunity to raise some of the concerns that GFMA CWG member firms have regarding reporting of commodities SFTs.

### Summary

The GFMA CWG welcomes the detailed Guidelines proposed by ESMA in relation to reporting under SFTR but believes that, while the proposed Guidelines are very helpful regarding securities SFTs, commodities SFTs are structured differently to securities SFTs and present a range of different issues, particularly in relation to categorisation of commodities SFTs as one or other of the types of SFT under SFTR.

Over the last year, the GFMA CWG has focussed on identifying and trying to resolve these categorisation issues, holding multiple meetings and calls with members to discuss their key concerns, commissioning external legal advice to support solutions based on the existing legislation and guidance under SFTR, and analysing the remaining situations where the position is unclear in order to try to reach an industry consensus. However, there remain a number of transaction types where it has not yet been possible to reach an industry consensus on categorisation (and in some cases, whether or not the relevant transaction is even within scope of SFTR at all).

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<sup>1</sup> The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit [www.gfma.org](http://www.gfma.org).

It seems unlikely that the industry will be able to reach agreement on these questions without further detailed guidance from ESMA, raising the risk that large numbers of transaction reports relating to commodities SFTs will fail to match within the trade repositories once reporting commences. Even where agreement can be reached between counterparties regarding categorisation before the trade is reported, in the absence of guidance specific to commodities SFT structures, firms will report on the basis of the transaction type which presents the fewest difficulties in adapting commodities SFT structures to the required reporting fields. This approach may not give ESMA or other regulators an accurate picture of the market in commodities SFTs.

Section 5.1.6 of the Consultation Paper touches on some of these categorisation questions at a very high level, but the GFMA CWG would welcome the opportunity to discuss with ESMA some of the more detailed questions that member firms have raised.

We would encourage ESMA to consider the categorisation issues we have raised in our answers to this consultation in the context of the structures most typically used in commodities markets.

The GFMA CWG welcomes the opportunity to provide these comments on the Consultation Paper and looks forward to having an ongoing dialogue with ESMA.

<ESMA\_COMMENT\_RSFTTR\_1>

## Questions

**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.

<ESMA\_QUESTION\_RSFTTR\_1>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_1>

**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.

<ESMA\_QUESTION\_RSFTTR\_2>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_2>

**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

<ESMA\_QUESTION\_RSFTTR\_3>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_3>

**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.

<ESMA\_QUESTION\_RSFTTR\_4>

ESMA comments in section 5.1.3 of the Consultation Paper that a repo or a reverse repo is a transaction concluded between two counterparties which involves a collateralised loan in one currency, and that collateralised loans in more than one currency would constitute separate SFTs.

The GFMA CWG would welcome guidance from ESMA on the definition of a repo or reverse repo with a commodity underlying, as "a collateralised loan" could describe any of the types of SFT which fall to be reported under SFTR.

<ESMA\_QUESTION\_RSFTTR\_4>

**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.

<ESMA\_QUESTION\_RSFTTR\_5>

As ESMA notes in section 5.1.4 of the Consultation Paper, Article 3(8) of SFTR states that a BSB / SBB is a transaction "not being governed by a repurchase agreement or by a reverse-repurchase agreement". However, ESMA goes on to state that "in the course of the consultations it has become apparent that certain BSB / SBB are governed by bilateral or master agreements, though the specific annexes covering them are different from those pertaining to repos and reverse repos. Undoubtedly, the type of SFT concluded is BSB / SBB".

As SFTR indicates that the key feature distinguishing a BSB from a repo is the fact that a BSB is not governed by a repurchase agreement or reverse-repurchase agreement, the GFMA CWG would welcome further guidance on the distinction between the two types of transaction where both may be governed by a master agreement and where both may involve outright title transfer. If the distinction is that a repo would be governed by a master repurchase agreement while a BSB may be governed by other terms of business or a different type of master agreement, it would be useful to have further guidance on the definition of a master repurchase agreement.

<ESMA\_QUESTION\_RSFR\_5>

**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.

<ESMA\_QUESTION\_RSFR\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFR\_6>

**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.

<ESMA\_QUESTION\_RSFR\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFR\_7>

**Q8** : Which approach would you favour in terms of reporting cash-driven SLB? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFR\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFR\_8>

**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.

<ESMA\_QUESTION\_RSFR\_9>

ESMA states in paragraph 75 that the counterparties need to identify the type of SFT that they are concluding on the basis of the agreement used for the transaction, and that in most cases this is defined by the existence of / lack of a master agreement. ESMA goes on to state that the counterparties should assess the extent to which the type of SFT involving commodities could fit into the fields applicable to that SFT, which will help to determine whether the transaction needs to be reported as a commodities lending or borrowing transaction, or as a SBB / BSB collateralised with commodities.

However, the GFMA CWG understands from its members that it is likely to be difficult for counterparties to reach an agreement on the type of SFT that they are concluding in many cases. Where the SFT is documented on industry standard repo documentation, we understand that the transaction is likely to be considered to be a repo / reverse repo (and that, based on ESMA's comments in paragraph 77 of the Consultation Paper, it would not matter whether the transaction involved title transfer or pledge arrangements). However, this only addresses one specific characterisation question and there remain a

significant number of categorisation questions still unresolved even after extensive discussions between industry participants and external law firms.

For example, many commodities transactions are entered into as two separate but economically linked transactions. In some circumstances two economically linked transactions under an ISDA master agreement (e.g., a spot commodities transaction and a commodities forward, neither of which would be a derivative under EMIR) might be considered to be an SFT. If this was the case, they could be categorised as a repo as they are entered into under a master agreement (even though the master agreement in question is not an industry standard repo master agreement and even though the master agreement does not create any link between the two transactions), or they could be categorised as a BSB as there is a purchase and subsequent sale of commodities even where both transactions are executed, confirmed and settled independently and in theory could be unwound separately. The reportable fields for repo and BSB transactions do not give any indication to support one conclusion or the other.

There are a large number of scenarios like this which the GFMA CWG and other industry participants have identified, and we would welcome the opportunity to discuss these further with ESMA with the aim of developing guidance specific to commodities SFTs.

<ESMA\_QUESTION\_RSFTTR\_9>

**Q10** : Are there any aspects that need to be clarified with regards to this type of SFTs? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_10>

**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.

<ESMA\_QUESTION\_RSFTTR\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_11>

**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.

<ESMA\_QUESTION\_RSFTTR\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_12>

**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.

<ESMA\_QUESTION\_RSFTTR\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_13>



**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.

<ESMA\_QUESTION\_RSFTTR\_14>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_14>

**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.

<ESMA\_QUESTION\_RSFTTR\_15>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_15>

**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.

<ESMA\_QUESTION\_RSFTTR\_16>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_16>

**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.

<ESMA\_QUESTION\_RSFTTR\_17>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_17>

**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.

<ESMA\_QUESTION\_RSFTTR\_18>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_18>

**Q19** : Do you agree with the proposal for reporting conclusion of SFTs? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_19>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_19>

**Q20** : Do you agree with the proposal for reporting modifications to SFTs? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_20>

**Q21** : Do you agree with the proposal for reporting collateral updates to SFTs? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_21>

**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.

<ESMA\_QUESTION\_RSFTTR\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_22>

**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.

<ESMA\_QUESTION\_RSFTTR\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_23>

**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.

<ESMA\_QUESTION\_RSFTTR\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_24>

**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.

<ESMA\_QUESTION\_RSFTTR\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_25>

**Q26** : Do you agree with the sequences proposed? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_26>

TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_26>

**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.

<ESMA\_QUESTION\_RSFR\_27>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_27>

**Q28** : Are there any other relationships that would need to be defined? If so, please detail which ones.

<ESMA\_QUESTION\_RSFR\_28>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_28>

**Q29** : Is there any aspect not covered by the ITS on reporting that would require further clarification? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFR\_29>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_29>

**Q30** : 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.

<ESMA\_QUESTION\_RSFR\_30>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_30>

**Q31** : 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.

<ESMA\_QUESTION\_RSFR\_31>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_31>

**Q32** : Please indicate how frequently is a haircut, margin or any other type of discount/add-on, applied to the loan side of SLB?

<ESMA\_QUESTION\_RSFR\_32>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_32>

**Q33** : Do you agree with the proposed approach? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_33>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_33>

**Q34** : Do you agree with the proposed approach? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_34>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_34>

**Q35** : Do you agree with the proposed approach on timing and use of FX rates? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_35>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_35>

**Q36** : Does ESMA need to provide additional guidance on the reporting of the valuation fields? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_36>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_36>

**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.

<ESMA\_QUESTION\_RSFTTR\_37>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_37>

**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.

<ESMA\_QUESTION\_RSFTTR\_38>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_38>

**Q39** : What other aspects with regards to the UTI have to be clarified? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_39>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_39>

**Q40** : Are there any other instances that need to be clarified? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_40>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_40>

**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.

<ESMA\_QUESTION\_RSFTTR\_41>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_41>

**Q42** : Do you agree with this approach? What other aspects need to be considered? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_42>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_42>

**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.

<ESMA\_QUESTION\_RSFTTR\_43>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_43>

**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.

<ESMA\_QUESTION\_RSFTTR\_44>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_44>

**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.

<ESMA\_QUESTION\_RSFTTR\_45>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_45>

**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.

<ESMA\_QUESTION\_RSFTTR\_46>  
TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_46>

**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.

<ESMA\_QUESTION\_RSFTTR\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_47>

**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.

<ESMA\_QUESTION\_RSFTTR\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_48>

**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.

<ESMA\_QUESTION\_RSFTTR\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_49>

**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.

<ESMA\_QUESTION\_RSFTTR\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_50>

**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.

<ESMA\_QUESTION\_RSFTTR\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_51>

**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.

<ESMA\_QUESTION\_RSFTTR\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_52>

**Q53** : Which of these approaches do you favour for reporting general and specific collateral? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_53>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_53>

**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.

<ESMA\_QUESTION\_RSFTTR\_54>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_54>

**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.

<ESMA\_QUESTION\_RSFTTR\_55>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_55>

**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.

<ESMA\_QUESTION\_RSFTTR\_56>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_56>

**Q57** : Do you agree with the approach regarding reporting fields 2.51 and 2.90? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_57>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_57>

**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.

<ESMA\_QUESTION\_RSFTTR\_58>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_58>

**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.

<ESMA\_QUESTION\_RSFTTR\_59>

The GFMA CWG believes that, while the proposed Guidelines are very helpful regarding securities SFTs, commodities SFTs are structured differently to securities SFTs and present a range of different issues,

particular in relation to categorisation of commodities SFTs as one or other of the types of SFT under SFTR.

As noted in our introductory comments, over the last year, the GFMA CWG has focussed on identifying and trying to resolve these categorisation issues, holding multiple meetings and calls with members to discuss their key concerns, commissioning external legal advice to support solutions based on the existing legislation and guidance under SFTR and analysing the remaining situations where the position is unclear in order to try to reach an industry consensus. However, there remain a number of transaction types where it has not yet been possible to reach an industry consensus on categorisation (and in some cases, whether or not the relevant transaction is even within scope of SFTR at all).

It seems unlikely that the industry will be able to reach agreement on these questions without further detailed guidance from ESMA, raising the risk that large numbers of transaction reports relating to commodities SFTs will fail to match within the trade repositories once reporting commences. Even where agreement can be reached between counterparties regarding categorisation before the trade is reported, in the absence of guidance specific to commodities SFT structures, firms will report on the basis of the transaction type which presents the fewest difficulties in adapting commodities SFT structures to the required reporting fields. This approach may not give ESMA or other regulators an accurate picture of the market in commodities SFTs.

Section 5.1.6 of the Consultation Paper touches on some of these categorisation questions at a very high level, but the GFMA CWG would welcome the opportunity to discuss with ESMA some of the more detailed questions that member firms have raised.

We would encourage ESMA to consider the categorisation issues we have raised in our answers to this Consultation Paper in the context of the structures most typically used in commodities markets.

To repeat our answer to Question 4, ESMA comments in section 5.1.3 of the Consultation Paper that a repo or a reverse repo is a transaction concluded between two counterparties which involves a collateralised loan in one currency, and that collateralised loans in more than one currency would constitute separate SFTs.

The GFMA CWG would welcome guidance from ESMA on the definition of a repo or reverse repo with a commodity underlying, as "a collateralised loan" could describe any of the types of SFT which fall to be reported under SFTR.

And to repeat our answer to question 5, as ESMA notes in section 5.1.4 of the Consultation Paper, Article 3(8) of SFTR states that a BSB / SBB is a transaction "not being governed by a repurchase agreement or by a reverse-repurchase agreement". However, ESMA goes on to state that "in the course of the consultations it has become apparent that certain BSB / SBB are governed by bilateral or master agreements, though the specific annexes covering them are different from those pertaining to repos and reverse repos. Undoubtedly, the type of SFT concluded is BSB / SBB".

As SFTR indicates that the key feature distinguishing a BSB from a repo is the fact that a BSB is not governed by a repurchase agreement or reverse-repurchase agreement, the GFMA CWG would welcome further guidance on the distinction between the two types of transaction where both may be governed by a master agreement and where both may involve outright title transfer. If the distinction is that a repo would be governed by a master repurchase agreement while a BSB may be governed by other terms of business or a different type of master agreement, it would be useful to have further guidance on the definition of a master repurchase agreement.

Finally, to repeat our answer to Question 9, ESMA states in paragraph 75 that the counterparties need to identify the type of SFT that they are concluding on the basis of the agreement used for the transaction, and that in most cases this is defined by the existence of / lack of a master agreement. ESMA goes on to state that the counterparties should assess the extent to which the type of SFT involving commodities



could fit into the fields applicable to that SFT, which will help to determine whether the transaction needs to be reported as a commodities lending or borrowing transaction, or as a SBB / BSB collateralised with commodities.

However, the GFMA CWG understands from its members that it is likely to be difficult for counterparties to reach an agreement on the type of SFT that they are concluding in many cases. Where the SFT is documented on industry standard repo documentation, we understand that the transaction is likely to be considered to be a repo / reverse repo (and that, based on ESMA's comments in paragraph 77 of the Consultation Paper, it would not matter whether the transaction involved title transfer or pledge arrangements). However, this only addresses one specific characterisation question and there remain a significant number of categorisation questions still unresolved even after extensive discussions between industry participants and external law firms.

For example, many commodities transactions are entered into as two separate but economically linked transactions. In some circumstances two economically linked transactions under an ISDA master agreement (e.g., a spot commodities transaction and a commodities forward, neither of which would be a derivative under EMIR) might be considered to be an SFT. If this was the case, they could be categorised as a repo as they are entered into under a master agreement (even though the master agreement in question is not an industry standard repo master agreement and even though the master agreement does not create any link between the two transactions), or they could be categorised as a BSB as there is a purchase and subsequent sale of commodities even where both transactions are executed, confirmed and settled independently and in theory could be unwound separately. The reportable fields for repo and BSB transactions do not give any indication to support one conclusion or the other.

There are a large number of scenarios like this which the GFMA CWG and other industry participants have identified, and we would welcome the opportunity to discuss these further with ESMA with the aim of developing guidance specific to commodities SFTs.

<ESMA\_QUESTION\_RSFTTR\_59>

**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.

<ESMA\_QUESTION\_RSFTTR\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_60>

**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.

<ESMA\_QUESTION\_RSFTTR\_61>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_61>

**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.

<ESMA\_QUESTION\_RSFTTR\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_62>

**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.

<ESMA\_QUESTION\_RSFTTR\_63>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_63>

**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.

<ESMA\_QUESTION\_RSFTTR\_64>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_64>

**Q65** : Do you agree with the proposed approach? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_65>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_65>

**Q66** : Do you agree with the proposed approach for calculating collateral haircuts or margin? Please provide justification for your response.

<ESMA\_QUESTION\_RSFTTR\_66>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_66>

**Q67** : Do you agree with the proposed approach for reporting collateral type field? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_67>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_67>

**Q68** : Do you agree with the proposed approach for reporting Availability for collateral reuse? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_68>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_68>

**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.

<ESMA\_QUESTION\_RSFTTR\_69>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_RSFTTR\_69>

**Q70** : Do you agree with the proposed approach for reporting plain vanilla bonds as collateral? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_70>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_70>

**Q71** : Do you agree with the proposed approach for reporting perpetual bonds as collateral? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_71>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_71>

**Q72** : Do you agree with the proposed approach for reporting main index equities as collateral? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFTTR\_72>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_72>

**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.

<ESMA\_QUESTION\_RSFTTR\_73>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_73>

**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.

<ESMA\_QUESTION\_RSFTTR\_74>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_74>

**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.

<ESMA\_QUESTION\_RSFTTR\_75>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_75>

**Q76** : Do you agree with the proposed approach for reporting prepaid collateral? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFR\_76>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_76>

**Q77** : Do you agree with the proposed approach for reporting portfolio code? Please detail the reasons for your response.

<ESMA\_QUESTION\_RSFR\_77>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_77>

**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.

<ESMA\_QUESTION\_RSFR\_78>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_78>

**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?

<ESMA\_QUESTION\_RSFR\_79>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_79>

**Q80** : Do you have any comments on cash collateral reinvestment, and do you agree with the scope?

<ESMA\_QUESTION\_RSFR\_80>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_80>

**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.

<ESMA\_QUESTION\_RSFR\_81>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_81>

**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.

<ESMA\_QUESTION\_RSFR\_82>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFR\_82>

**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.

<ESMA\_QUESTION\_RSFTTR\_83>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_83>

**Q84** : What other aspects need to be considered to make the process more efficient? Please elaborate on the reasons for your response?

<ESMA\_QUESTION\_RSFTTR\_84>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_84>

**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?

<ESMA\_QUESTION\_RSFTTR\_85>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_RSFTTR\_85>