

20 January 2020

Circular on Regulation (EU) No 2015/2365 - the Securities Financing Transactions Regulation ('SFTR')

Understanding the implications of the Securities Financing Transactions Regulation on Maltese Counterparties

This circular is being addressed to all market participants, particularly entities which enter into securities financing transactions falling under the scope of SFTR, *inter alia* financial and non-financial counterparties as defined in Article 3 of SFTR.

This circular should be read in conjunction with its Delegated Acts and previous circulars issued by the Authority on this matter. Details on SFTR can be accessed through the MFSA's [dedicated section in its website](#).

Background

The European Union ('EU') adopted the SFTR in 2015 as an effort to enhance transparency of certain activities in financial markets, especially the use of securities financing transactions ('SFTs') and the reuse of collateral. The Regulation establishes rules for reporting the details of SFTs to trade repositories, disclosure requirements of SFTs and total return swaps to investors in Collective Investment Schemes and sets the transparency conditions to be met by parties involved in collateral reuse.

Firms in scope of SFTR

The SFTR applies to counterparties as defined by Article 3, which are established in the EU or in a third country (if the SFT is concluded in the course of operations of a branch in the EU of that counterparty). In particular, it applies to Financial Counterparties ('FCs'), namely, credit institutions, Investment Firms, Central Counterparties ('CCPs'), Central Securities Depositories ('CSDs'), Insurance and Reinsurance undertakings, Undertakings for Collective Investment of Transferable Securities ('UCITs'), Alternative Investment Funds ('AIFs') and Non-Financial Counterparties ('NFCs'), the latter being all other entities established in Malta not falling within the definition of FCs.

What are Securities Financing Transactions?

Securities financing transactions are transactions whereby securities are used to borrow cash, or vice versa. In each SFT, ownership of the securities provisionally changes in return for cash, and similarly the cash temporarily changes ownership. At the end of an SFT, the change of ownership for the securities and for the cash reverts to its original owner, and both counterparties get back what they possessed prior to the SFT. In this regard, SFTs act like collateralised loans. In brief, SFTs can be therefore described as the temporary exchange of cash or securities against collateral.

Article 3 of the SFTR defines SFTs as:

- A repurchase transaction;
- Securities or commodities lending and securities or commodities borrowing;
- A buy-sell back transaction or sell-buy back transaction; or
- A margin lending transaction.

Recital 7 of SFTR indicates that 'liquidity swaps' and 'collateral swaps' not falling under the definition of derivative contracts under EMIR are considered to be SFTs. Having said this, by definition, derivative contracts as defined by Article 2 of the European Markets Infrastructure Regulation ('EMIR') do not fall in scope of SFTR.

The Securities Financing Transactions Regulation

The SFTR was published in the Official Journal of the European Union on 23 December 2015 and came into force on 12 January 2016. The main aim of the regulation is to increase the transparency of securities financing markets, which are not currently covered through other European legislations.

To ensure a consistent approach to the regulation, ESMA has developed detailed rules on reporting to trade repositories through regulatory technical standards ('RTS') and implementing technical standards ('ITS'), which came into force in April 2019 but will be periodically phased-in as follows:

- 14 April 2020 – Reporting obligation for Credit Institutions and Investment Firms;
- 13 July 2020 – Reporting obligation for CCPs and CSDs;
- 12 October 2020 – Insurance Companies, AIFs, UCITs and pension funds;
- 11 January 2021 – Reporting obligation for non-financial counterparties.

Key requirements under SFTR

1. Transaction Reporting

The Regulation requires both counterparties to an SFT to report the details of any SFT they have concluded, as well as any modification or termination, to a registered trade repository registered with the European Securities and Markets Authority ('ESMA') or recognised in accordance with SFTR. The details of SFTs need to be reported on a T+1 basis. Moreover, counterparties must maintain records of SFTs for at least five years following the termination of the transaction.

The respective RTS specifying the details of the reports and the ITS specifying the format and frequency of the reports for different SFTs may be found below.

2. Collateral Reuse

All counterparties will have the right to reuse financial instruments received as collateral under a security or title transfer of collateral arrangement, provided that the conditions imposed by the SFTR on the right to reuse financial instruments provided as collateral are satisfied.

3. Information Disclosure for UCITs and AIFs

The Regulation requires managers of UCITs and managers of AIFs (AIFMs), authorised in the EU, to make detailed disclosures of their use of SFTs and total return swaps in regular reports so that investors are aware of the risks associated with their use.

A collective investment company's investment policy with respect to SFTs and total return swaps should be clearly disclosed in the pre-contractual documents.

Periodic reports: disclosure of the information set out in Section A of the Annex to the SFTR in the six monthly and annual reports required under the UCITS Directive or the annual report required under the AIFMD.

Pre-contract disclosure: disclosure of the information set out in Section B of the Annex to the SFTR in the prospectus required under the UCITS Directive or the pre-contractual documents required under the AIFMD.

Regulatory Technical Standards

The EU Commission has adopted the following delegated acts to support or amend the SFTR:

- [RTS specifying the details of SFTs to be reported to trade repositories;](#)
- [RTS on the access to details of SFTs held in trade repositories;](#)
- [RTS on the collection, verification, aggregation, comparison and publication of data on SFTs by trade repositories;](#) and
- [RTS specifying the details of application for registration and extension of registration as a trade repository.](#)

Implementing Technical Standards

The Commission has also adopted 3 ITSs:

- [ITS on the format and frequency of reports on the details of securities financing transactions to trade repository;](#)
- [ITS on the format of application for registration and extension of registration of trade repository;](#) and
- [ITS on the procedures and forms for exchange of information on sanctions, measures and investigations.](#)

Contacts

Should you have any queries on the above, please do not hesitate to contact Mr Luca Caruana and Ms Rachelle Baldacchino, Analysts within the Securities and Markets Supervision, on SFTR@mfsa.mt for any further clarifications.