

19 October 2020

Transaction Reporting by Non-Financial Counterparties under the Securities Financing Transactions Regulation (EU) N° 2015/2365 ('SFTR')

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

Reporting Requirement

SFTR mandates reporting of all Securities Financing Transactions ('SFTs') to a registered Trade Repository within particular deadlines applicable to different entities. The Malta Financial Services Authority ('the MFSA') would like to draw your attention to the obligation of *non-financial counterparties*, to report SFTs in accordance with Article 4 of the SFTR.

The reporting obligation for non-financial counterparties is applicable from 11 January 2021.

The SFTR 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') 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.

In order to fall within the scope of SFTR, an SFT should be defined¹ as: (i) a repurchase transaction; (ii) securities or commodities lending and securities or commodities borrowing; (iii) a buy-sell back transaction or sell-buy back transaction; (iv) a margin lending transaction or (v) liquidity swaps and collateral swaps not falling under the definition of derivative contracts under EMIR.

¹ Article 3 of the SFTR Regulation

Classification under SFTR

i. Non-Financial Counterparty (NFC)

An entity will be defined as an NFC if it is an 'undertaking' established in the EU or in a third country and does not fall within the 'financial counterparties' definition

ii. Small Medium Enterprise Non-Financial Counterparty (small NFC)

An entity will be an SME NFC if it is a non-financial counterparty which does not exceed the limits of at least two of the three following criteria:

- (a) balance sheet total: EUR 20 000 000;
- (b) net turnover: EUR 40 000 000;
- (c) average number of employees during the financial year: 250.

Next Steps

The Authority is currently in the process of assessing all those entities, falling within the definition of non-financial counterparty, which will be directly impacted by SFTR. In this respect, the MFSA requests entities to determine whether they offer services **to any entity falling within definition of 'non-financial counterparty'** for the purposes of the SFTR. In the affirmative, the Company is kindly requested to **liaise with the 'non-financial' entity and** inform the MFSA accordingly by filling in the template presented in Annex 1.

Information on SFTR is available on the MFSA website through this [Link](#). We look forward to hearing from you at the earliest convenience, and preferably by not later than 30 November 2020.

Should you have any queries in relation to the above, please do not hesitate to contact the Authority on SFTR@mfsa.mt

Yours Sincerely,

Malta Financial Services Authority

The MFSA ensures that any processing of personal data is conducted in accordance with Regulation (EU) 2016/679 (General Data Protection Regulation), the Data Protection Act (Chapter 586 of the Laws of Malta) and any other relevant European Union and national law. For further details, you may refer to the MFSA Privacy Notice available on the MFSA webpage www.mfsa.mt

Annex I: SFTs conducted during 2019		
Company information		
Company Name		
LEI (if applicable)		
Name of person responsible		
Function of person responsible		
Phone number		
Email address		
Does the counterparty fall within scope of the SFTR? (If yes, please fill the information below)	YES	NO

SFTs Activity Information	
Type of SFTs conducted	
Type of Counterparty	<input type="checkbox"/> NFC+ <input type="checkbox"/> NFC- Other: _____
Aggregate Value	
Value of:	
a. Repurchase Transactions	
b. Securities or commodities lending and securities or commodities borrowing	
c. Buy-sell back transactions or sell-buy back transactions	
d. Margin lending transactions	

Definitions	
Type of Counterparty - Financial or Non-Financial Counterparties	
Financial Counterparties:	Investment Firms;
	Banks;
	Insurance/Reinsurance Institutions;
	CCPs;
	CSDs;
	AIFs, UCITs and Pension Funds
Non-Financial Counterparties	An undertaking other than the entities listed above
Types of SFTs:	
a. Repurchase Transactions	governed by an agreement, a counterparty transfers securities... subject to a commitment to repurchase them, at a specified price on a future date specified, or to be specified, by the transferor
b. Securities or commodities lending and securities or commodities borrowing	governed by an agreement, a counterparty transfers securities subject to a commitment that the borrower will return equivalent securities or commodities on a future date or when requested to do so by the transferor
c. Buy-sell back transactions or sell-buy back transactions	a counterparty buys or sells securities, agreeing, respectively, to sell or to buy back securities, at a specified price on a future date, such buy-sell back transaction or sell-buy back transaction not being governed by a repurchase agreement