

ASSET MANAGEMENT AND INVESTMENT FUNDS  
CAPITAL MARKETS

# SFTR: Reporting for investment funds and other financial counterparties commences in October

18 August 2020

13 July 2020 saw the commencement of phases one and two of reporting under the [Securities Financing Transactions Regulation](#) ((EU) 2015/2365) (“SFTR”).

**Ireland Law Firm of the Year 2020**  
Chambers Europe Awards

**Ireland Law Firm of the Year 2020 & 2018**  
International Financial Law Review (IFLR)  
Europe Awards

**Structured Finance & Securitisation Deal of the Year 2020 – Stenn trade receivables securitisation**  
IFLR Europe Awards

**Ireland M&A Legal Adviser of the Year 2019 & 2018**  
Mergermarket European M&A Awards

**Best Firm in Ireland 2019 & 2018**  
Europe Women in Business Law Awards

**Best National Firm for Women in Business Law 2019 & 2018**  
Europe Women in Business Law Awards

**Best National Firm Mentoring Programme 2019 & 2018**  
Europe Women in Business Law Awards

**Best National Firm for Minority Women Lawyers 2019 & 2018**  
Europe Women in Business Law Awards

**Ireland Law Firm of the Year 2019 & 2018**  
Who's Who Legal

**Most Inclusive Law Firm 2019**  
Managing Partners' Forum Awards

**Ireland Client Service Law Firm of the Year 2018**  
Chambers Europe Awards

**Equity Deal of the Year 2018 – Allied Irish Banks IPO**  
IFLR Europe Awards

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

SFTR is a transaction reporting framework established to increase transparency in the securities financing markets. Under the reporting regime, counterparties (including UCITS, UCITS management companies, EU AIFs and EU authorised AIFMs) are required to report details of Securities Financing Transactions (“SFTs”) they have entered into to a Trade Repository (“TR”), along with details of any modification or termination thereof.

## SFTS

The SFTR defines SFTs as:

- repurchase transactions (“repos”);
- securities or commodities lending or borrowing;
- a buy-sell back transaction or sell-buy back transaction; and
- margin lending transactions.

Total return swaps are not included in the SFTR reporting obligation as they are already subject to EMIR reporting.

The European Securities and Markets Association (“ESMA”) published its final SFTR reporting guidance (“[Guidelines](#)”) at the beginning of the year. These [Guidelines](#) aim to clarify a number of provisions of SFTR and to provide practical guidance on the implementation of some of these provisions. The Guidelines clarify that the following are not classified as SFTs:

- retail client lending governed by consumer credit legislation;
- private banking loans and Lombard loans not related to securities financing;
- syndicated lending and other corporate lending for commercial purposes;
- overdraft facilities of custodians and central counterparty (“CCP”) daylight lending facilities;
- fails-curing intraday credit / overdraft;
- central bank auto-collateralisation;
- give-ups and take-ups in the execution and clearing chain;
- commodities transactions entered into for operational and/or industrial purposes; and
- transactions involving emission allowances.

## REPORTING

Overall, there are four phases to the implementation of the reporting requirements, which are based on entity type. Reporting to a TR must be done within one working day of the conclusion, modification or termination of the SFT. The details that must be reported with respect to each SFT are set out in the SFTR (and [related regulatory technical standards](#) and [implementing technical standards](#)), and include the principal amount, currency and maturity date.

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The Guidelines also provide clarity regarding the following reporting aspects:

- the reporting start date when it falls on a non-working day;
- the number of reportable SFTs;
- the population of reporting fields for different types of SFTs;
- the approach used to link SFT collateral with SFT loans;
- the population of reporting fields for margin data;
- the population of reporting fields for reuse, reinvestment and funding sources data;
- the generation of feedback by TRs and its subsequent management by counterparties, namely in the case of (i) rejection of reported data and (ii) reconciliation breaks; and
- the provision of access to data to authorities by TRs.

As of 13 July 2020, phases one (*investment banks*) and two (*clearing counterparties and central depositories*) are live. ESMA reported a successful first day of reporting by all four TRs. In a statement, ESMA noted that the focus of its supervision will focus on “ensuring the availability of TR systems as well as resolving shortcomings in the quality of data provided by reporting entities to TRs”. It advised that it will look to clarify any remaining issues around reporting requirements to market participants.

Phase three (*other financial counterparties*)

and Phase four (*non-financial counterparties*) are scheduled to begin on the first working day after 11 October 2020 and 11 January 2021, respectively. Phase three will include UCITS and AIFs, with the UCITS management company or AIFM being responsible for reporting on behalf of the UCITS or AIF.

### PHASE THREE - REPORTING FOR FUNDS COMMENCES ON 12 OCTOBER

All SFTs entered into, modified or terminated (other than an SFT terminating at the end of its scheduled term) by a UCITS or an AIF on or after the date on which phase three commences (12 October 2020) must be reported. Following the publication of the Guidelines, the European Commission confirmed that non-EU AIFs are not in scope of the reporting obligation. This is the case even if the AIFM is authorised or registered in accordance with the AIFMD, except in respect of SFTs concluded in the course of the operations of an EU branch of the non-EU AIF.

As noted above, the AIFM is responsible for reporting when the AIF is a counterparty to an SFT. However, if the AIFM is not subject to SFTR, because it is a non-EU AIFM or a registered AIFM<sup>1</sup>, the responsibility for reporting remains with the fund.

Where a sub-fund enters into an SFT, then the sub-fund should be reported as the

counterparty on a standalone basis. If the umbrella fund enters into an SFT on behalf of its sub-fund, the sub-fund must be reported as the beneficiary to the SFT.

UCITS management companies and AIFMs should ensure that that International Securities Identification Numbers (“ISINs”) are in place for any securities underlying a fund’s in-scope trades. Counterparties are also required to report the Legal Entity Identifier (“LEI”) of the underlying issuer. In response to concerns expressed by market participants about the LEI coverage in non-EU jurisdictions, ESMA has confirmed that trade reports that do not include an LEI for the underlying issuer will be allowed, but only where the underlying issuer is a third-country issuer with no LEI. This is a temporary measure that will be in place until 13 April 2021.

The SFTR also requires certain SFTs concluded by a UCITS or an AIF before the phase three commencement date (12 October 2020) to be reported by way of backloading. Notably, in the case of backloading required under phases one and two, ESMA issued a statement to the National Competent Authorities (“NCAs”) noting that it expected the NCAs not to prioritise the enforcement of backloading requirements and to “apply their risk-based approach in the exercise of supervisory powers...in a proportionate manner”. It remains to be seen whether the same approach will be taken in respect of phase three backloading requirements.

<sup>1</sup> A ‘registered’ or ‘sub-threshold’ AIFM is an EU AIFM that has assets under management below the de minimis thresholds prescribed in the AIFMD and is only subject to certain requirements of AIFMD.

## KEY CONTACTS

If you would like to discuss the foregoing, or require any assistance assessing your requirements, please feel free to contact a member of our team.

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