

EU Commission Confirms No SFTR Reporting for Non-EU Funds

March 11, 2020

The European Commission has clarified in a letter to the Alternative Investment Management Association (AIMA) **published** on February 10, 2020,¹ further to AIMA's request for clarification, that the requirement to report securities financing transactions (SFTs) under the Securities Financing Transactions Regulation (SFTR)² does not apply to alternative investment funds (AIFs) which are established outside of the European Union and which are managed by an EU alternative investment fund manager (AIFM).

The clarification provides relief for the buy-side following the publication on January 6, 2020 of the European Securities and Markets Authority's (ESMA) "**Final Report** – Guidelines on reporting under Articles 4 and 12 of the SFTR" (the "ESMA Final Report") which indicated that the reporting requirement applies to a non-EU AIF of an EU AIFM.³ This would have given the SFTR significant extra-territorial reach, requiring reporting systems to be built by the non-EU AIF which, not being subject to reporting requirements under the European Market Infrastructure Regulation (EMIR), would generally not have systems already in place that could be adapted to address the requirements of SFTR reporting. As non-EU funds managed by non-EU managers are not subject to SFTR reporting, it is now the case that all non-EU funds, wherever managed, are outside of the scope of the SFTR reporting rules.

The European Commission has explained in its letter that:

"Non-EU AIFs (i.e. AIFs not established in the Union), are not subject to the obligations set out in Article 4(1) SFTR, even if the AIFM is authorised or registered in accordance with Directive 2011/61/EU, except in respect of SFTs concluded in the course of the operations of a branch in the Union of the Non-EU AIF."

The SFTR reporting obligation requires all in-scope entities to report SFTs which they conclude, modify or terminate on a T+1 basis. The reporting obligation is phased-in from April 2020, although for fund managers the key date is October 11, 2020, with a final commencement date for EU "non-financial counterparties" (including some managed accounts) of January 11, 2021. For further information on the reporting obligation under the SFTR, please see our previous **Client Alert**.

Contact Information

If you have any questions concerning this alert, please contact:

Ezra Zahabi

Partner

ezra.zahabi@akingump.com

London

+44 20.7661.5367

Tim Pearce

Partner

tpearce@akingump.com

London

+44 20.7012.9663

Ian Meade

Partner

imeade@akingump.com

London

+44 20.7012.7664

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¹ On January, 14, 2020, AIMA wrote to the European Commission and ESMA following publication of the ESMA Final Report to seek clarification given the apparent conflict between the ESMA Final Report and the text of the SFTR.

² Pursuant to Articles 4 and 12 of the SFTR.

³ Paragraph 132 of the ESMA Final Report states that “ESMA has neither [sic] taken on board the feedback by some respondents that non-EU AIFs are not required to report irrespective of the location of the AIFM, as AIFs managed by AIFM [sic] registered or authorised under AIFMD are subject to reporting under SFTR.”

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