

Investment Management Alert

May 19, 2017

Key Points:

- SFTR requires most EU based fund managers to make new detailed disclosures to investors about their use of certain financing structures.
- These include repos, security lending arrangements and sell and buyback transactions.
- Affected managers will need to update offering documents for their funds and update disclosures to existing investors no later than 13 July 2017.



Securities Financing Transactions Regulation—Update

Introduction

Regulation (EU) 2015/2365, the Securities Financing Transactions Regulation (SFTR), imposes a number of requirements on EU fund managers (see the previous Akin Gump client alert on SFTR, [The New Securities Financing Transactions Regulation](#)). The SFTR applies to securities financing transactions, including securities lending agreements, repos, margin lending and buy-sellbacks. The SFTR also imposes certain disclosure requirements regarding the use of total return swaps. Managers of funds constituted before the SFTR entered into force (“Pre-SFTR Funds”) benefited from limited grandfathering provisions. By contrast, there was no corresponding grandfathering period for managers of funds established after 13 January 2016, who were required to make the relevant disclosures from that date.

Managers of Pre-SFTR Funds will be required to comply with the investor disclosure requirements (the “Disclosures”) from 13 July 2017.

Further, the periodic investor report disclosure requirements (“Reporting Disclosures”) became applicable to all funds in January 2017, meaning that annual or semiannual reports must now comply with the relevant requirements.

The SFTR also imposes other requirements on managers, the implementation of which is being phased in. Currently applicable requirements principally relate to arrangements permitting the reuse of collateral (including on a title transfer basis). Managers will be required to report details of securities financing transactions (SFT) to trade repositories from 2018. The details of these requirements are not discussed in this alert.

Complying with the Disclosure Obligations

Disclosures to fund investors and prospective investors

The Disclosures must include certain prescribed information as set out in an annex to the SFTR. This includes a description of the SFTs and total return swaps used, and the commercial rationale. In addition, overall data about limits and exposures, collateral and counterparty quality must also be disclosed.

The Disclosures partially overlap with the UCITS/AIFMD disclosure requirements, including as to risk management. However, the OM Disclosures require more in-depth data, specifically on STFs and total return swaps. In the case of UCITS funds, the relevant prospectuses must be updated, whereas managers of AIFs may choose whether to update the relevant offering memorandum or produce a separate disclosure document.

Disclosures in periodic investor reports

The Reporting Disclosures took effect on 13 January 2017. Disclosures in the AIF annual and the UCITS annual and semiannual investor reports must include the items also set out in the annex to the SFTR. The Reporting Disclosures must include global asset data, concentration and aggregate transaction data. The Reporting Disclosures must also disclose data on the reuse of collateral, including reinvestment returns. Additionally, safekeeping arrangements of collateral received and provided for SFTs and total return swaps must be disclosed.

Next Steps

Managers should consider whether funds' offering documentation should be updated to include the prescribed disclosures or, in the case of AIFs, whether they will produce a separate disclosure document as an alternative. The disclosures should be settled in good time for 13 July 2017.

Separately, managers should ensure that all annual and, where relevant, semiannual, investor reports produced now include the requisite Reporting Disclosures.

Contact Information

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