Regulation (EU) 2015/2365 on transparency of securities financing transactions (the SFTR) generally came into effect from January 2016. However, the obligation to report securities financing transactions (SFTs) to a trade repository (TR) does not yet apply. Following a lengthy delay in finalising the reporting provisions, the SFTR regulatory technical standards and implementing technical standards entered into force on 11 April 2019 and the reporting obligation will be phased-in from 14 April 2020.

Technical standards on reporting
The SFTR provides for detailed technical standards to be made by the European Commission addressing (i) authorisation of TRs and their performance of their functions (ii) access by regulators and other public authorities to data held by TRs and (iii) content, format and frequency of reports by market participants to TRs with respect to SFTs. The reporting obligation is to be phased-in, with different time periods applying to different categories of market participant, following the technical standards coming into force.

Phase-in of the reporting obligation
As the technical standards entered into force on 11 April 2019, the reporting obligation will be phased-in as follows:

- **14 April 2020** for investment firms and credit institutions (and, if acting through a European Union branch, third country entities that would be investment firms or credit institutions if established in the European Union).
- **13 July 2020** for CCPs and central securities depositories (and third country equivalents).
- **12 October 2020** for other financial counterparties (and third country equivalents).
- **11 January 2021** for non-financial counterparties.

Backloading obligation
The reporting obligation applies to both SFTs concluded on or after the applicable phase-in date and certain SFTs entered into prior to phase-in. This so-called “backloading obligation” captures those SFTs entered into before the phase-in date that remain outstanding on that date and:

(i) have a remaining maturity on the phase-in date exceeding 180 days; or
(ii) have an open maturity and remain outstanding 180 days after the phase-in date.

Backloaded SFTs must be reported within 190 days of the relevant phase-in date.

Counterparties with later phase-in dates may choose to commence reporting ahead of time to reduce the need to backload trades following the phase-in date.

Obligation to report
Generally, each counterparty to the transaction, once phased-in for reporting, is required to report the details of the relevant SFT. There are, however, a number of exceptions.

Under Article 4 of the SFTR, where a transaction is entered into between a financial counterparty (FC) and a non-financial counterparty that is a small or medium-size enterprise (NFC-SME), the FC is responsible for reporting on behalf of the NFC-SME as well.

NFC-SMEs are small NFCs which, on their balance sheet dates, fall below at least two of the following thresholds:

- Balance sheet total €20,000,000
- Net turnover €40,000,000
- Average number of employees during financial year 250

The NFC-SME classification and FC reporting obligation is likely to be particularly relevant in the context of SPVs entering into SFTs. The reporting obligation for SFTs entered into by both UCITS and AIFs is also deemed to fall on the UCITS manager and AIFM respectively.

Counterparties may also choose to delegate the reporting obligation but will retain responsibility for complying with that obligation.

What do you need to report?
The details required to be reported are extensive and involve more than 150 fields. The requirements are set out in

New Master Regulatory Reporting Agreement

ISLA has announced that it is working with the FIA, AFME, ICMA and ISDA to draft a new Master Regulatory Reporting Agreement. The new agreement is expected to cover both mandatory and delegated reporting of SFTs under the SFTR and derivative transactions reported under EMIR.

Implications of Brexit?

Given the phase-in outlined above, if there is a transitional period to the end of 2020, UK entities (except for non-financial counterparties) would become subject to the reporting obligation under the SFTR as it is phased-in during 2020.

If the UK exits the European Union in January 2020 without a transitional period, since the reporting obligation under the SFTR will not be applicable as at exit day, the relevant technical standards will not be "onshored" under the European Union (Withdrawal) Act 2018. While it is expected that reporting of SFTs will be required in the UK post-Brexit, it is likely that the information to be reported will be the same as or similar to that required under the relevant reporting standards under the SFTR, the position is currently uncertain. Click here for our client alert on SFTR compliance in a no-deal scenario.

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