



November 2016

The Securities Financing Transaction Regulation – Upcoming Deadline

Entities engaging in securities financing transactions and total return swaps, including UCITS management companies, UCITS investment companies and Alternative Investment Fund Managers (“**AIFMs**”) will be aware of the EU Regulation on reporting and transparency of securities financing transactions (the “**SFT Regulation**”) that entered into force on 12 January, 2016.

As a reminder, the SFT Regulation provides for reporting and disclosure requirements (subject to certain transitional implementation dates) with the aim of improving the transparency of securities financing transactions (“**SFTs**”) in the shadow banking sector. SFTs are specifically defined in the SFT Regulation as follows:

- a repurchase transaction (to include reverse repos)
- securities or commodities lending/borrowing
- a buy-sell back or sell-buy back transaction
- a margin lending transaction

A link to our previous briefing on the SFT Regulation can be found [here](#).

We now wish to remind you of the disclosure requirements for the annual and half-yearly reports in light of the **UPCOMING DEADLINE**.

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Annual report and half-yearly report

Article 13 of the SFT Regulation requires UCITS management companies, UCITS investment companies, and AIFMs to provide information to investors on the use made of SFTs and total return swaps in the annual report of each UCITS/AIF under management, as well as in each half-yearly report for UCITS.

Article 13 of the SFT Regulation applies from **13 January 2017**.

So, which report should first include this disclosure?

The European Securities and Markets Association (**ESMA**) have recently confirmed that the information should be included in the **next annual or half-yearly report to be published after 13 January 2017**.

This now clarifies that the requirements apply to financial statements covering a reporting period before 13 January 2017 (e.g. investment funds with a year end as of 30 September or annual/half yearly reports with a reporting period ending 31 December, 2016) and which are published after 13 January 2017.

What needs to be included?

UCITS management companies and AIFMs shall inform investors on the use they make of SFTs and total return swaps and this shall be included in the annual and semi-annual accounts for UCITS and annual accounts for AIFs.

Some of the disclosures are partially covered through existing GAAP or in other regulatory requirements. However, most of the requirements are new.

Section A of the Annex to the SFT Regulation sets out the disclosure requirements as follows:

Global data:	Data on reuse of collateral:
<ul style="list-style-type: none">▪ <i>The amount of securities and commodities on loan as a proportion of total lendable assets defined as excluding cash and cash equivalents;</i>▪ <i>The amount of assets engaged in each type of SFTs and total return swaps expressed as an absolute amount (in the collective investment undertaking's</i>	<ul style="list-style-type: none">▪ <i>Share of collateral received that is reused, compared to the maximum amount specified in the prospectus or in the disclosure to investors;</i>▪ <i>Cash collateral reinvestment returns to the collective investment undertaking.</i>

<i>currency) and as a proportion of the collective investment undertaking's assets under management (AUM).</i>	
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<p>Concentration data:</p> <ul style="list-style-type: none"> ▪ <i>Ten largest collateral issuers across all SFTs and total return swaps (break down of volumes of the collateral securities and commodities received per issuer's name);</i> ▪ <i>Top 10 counterparties of each type of SFTs and total return swaps separately (Name of counterparty and gross volume of outstanding transactions).</i> 	<p>Safekeeping of collateral received by the collective investment undertaking as part of SFTs and total return swaps:</p> <ul style="list-style-type: none"> ▪ <i>Number and names of custodians and the amount of collateral assets safe-kept by each of the custodians.</i> <p>Safekeeping of collateral granted by the collective investment undertaking as part of SFTs and total return swaps:</p> <ul style="list-style-type: none"> ▪ <i>The proportion of collateral held in segregated accounts or in pooled accounts, or in any other accounts.</i>
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<p>Aggregate transaction data for each type of SFTs and total return swaps separately to be broken down according to the below categories:</p> <ul style="list-style-type: none"> ▪ <i>Type and quality of collateral;</i> ▪ <i>Maturity tenor of the collateral broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open maturity;</i> ▪ <i>Currency of the collateral;</i> ▪ <i>Maturity tenor of the SFTs and total return swaps broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open transactions;</i> ▪ <i>Country in which the counterparties are established;</i> ▪ <i>Settlement and clearing (e.g., tri-party,</i> 	<p>Data on return and cost for each type of SFTs and total return swaps broken down between the collective investment undertaking, the manager of the collective investment undertaking and third parties (e.g. agent lender) in absolute terms and as a percentage of overall returns generated by that type of SFTs and total return swaps.</p>
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<i>Central Counterparty, bilateral).</i>	
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Where does the disclosure have to go?

The SFT Regulation does not prescribe whether disclosure needs to be included in any specific section of the financial statements.

They will be subject to audit and will require prior year comparatives if they are included in the notes to the financial statements.

Immediate Next steps

Clients should discuss with their service providers involved in the preparation of the financial statements the upcoming planning process to ensure the impact of the SFT Regulation to the financial statements is correctly and adequately identified.

Clients will need to carefully consider how best to source the relevant additional data requirements and how this should be presented in the financial statements.

What about UCITS Prospectus and the disclosure by the AIFM to investors?

Umbrella investment funds which have been approved since 12 January 2016 should have the specified disclosures included within the prospectus already. However, sub-funds created before or after 12 January, 2016 have until 13 July 2017 to update the prospectus/sub-fund supplement.

It is important to note that the Central Bank has stressed that, in the case of UCITS and RIAIFs, the onus is on the fund management company to ensure that draft documentation is submitted to the Central Bank sufficiently in advance of that date to ensure that final revised prospectus documentation is in place on time. It is likely that a number of other investment funds will be seeking to make similar prospectus changes at that time and the fund management company should bear this in mind when planning this project.

The Central Bank has confirmed that any risk of non-compliance due to delayed update of prospectus documentation, whatsoever the reason, lies with the fund management company.

Your usual Dillon Eustace contact can assist you in relation to updating the prospectus/sub-fund supplement or with any other queries you may have.

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November 2016

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