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Securities Financing Transactions Regulation: Non-EU AIFs out of reporting scope

Of particular interest to: firms engaged in securities financing transactions

Our January 'Alert' on the Securities Financing Transactions Regulation (SFTR) concerned ESMA's publication of both its Final Report and Guidelines on reporting under the Regulation.

We drew attention to comments in the Final Report (page 31, s132) to the effect that non-EU AIFs managed by EU AIFMs are also captured by the reporting obligation. It was also mentioned that at least one trade body had written to the European Commission expressing concern on this apparent expansion in the scope of the SFTR – Article 2(1)(a) of SFTR advises that the scope of the Regulation includes counterparties established in the Union (and their branches wherever they are located).

Both the European Commission and ESMA (which was copied into the above letter) have responded positively to confirm that **non-EU AIFs are indeed outside the scope of reporting under the SFTR** even if managed by an AIFM authorised or registered under the AIFMD.

Below is a verbatim extract from the ESMA response:

"In the light of the above, 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".

For the record, the above mentioned Article 4(1) imposes a reporting obligation on counterparties to SFTs (albeit that later in Article 4, responsibility for reporting on

behalf of an AIF is placed upon the AIFM).

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Terminal House, 1st Floor, 52 Grosvenor Gardens, Belgravia, London SW1W 0AU