

Luxembourg newsflash

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EU Securities Financing Transactions Regulation (“SFTR”): are you ready to comply with Article 15 SFTR?

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The SFTR, which is due to be published shortly, aims at increasing the level of transparency in securities financing transactions such as securities or commodities lending, repos and margin lending.

The SFTR primarily sets out a new reporting obligation regime for securities financing transactions on terms similar to those applicable to derivatives under EMIR. Furthermore, Article 15 SFTR also imposes far-reaching new disclosure and information obligations on counterparties which receive financial instruments as collateral with a right of use.

What information obligation?

Article 15 SFTR requires any counterparty (including corporate and private enterprises) receiving financial instruments as collateral either by way of a pledge with a right of use or a title transfer agreement to inform the collateral provider of “the risks and consequences” of consenting to a right of use in favour of the collateral taker.

The risk disclosure will in particular need to cover the insolvency risk of the collateral receiver and the risk of unavailability of the securities provided as collateral after having been used.

Such disclosure will have to be made in writing and the collateral provider will have to give its express consent, in writing, prior to the entry into the collateral agreement. The latter will need to indicate in which manner the collateral taker can use the collateral assets.

Which transactions are targeted?

The scope of Article 15 is broader than the scope of the SFTR in that it applies to:

- Any pledge arrangement the terms of which provide for a right of reuse;
- Any agreement for the provision of collateral by way of a title transfer collateral arrangement.

To whom does this obligation apply?

- Any counterparty established in the EU which receives collateral with a right of use;

- Any counterparty established in a third country which receives collateral with a right of use through a branch in the EU; or
- Any counterparty established in a third country which receives collateral with a right of use from an EU counterparty.

When will Article 15 of the SFTR enter into force?

Article 15 of the SFTR will enter into force 6 months after the coming into force of the SFTR which is scheduled for early 2016.

Most importantly, the provisions of Article 15 will apply to all existing collateral arrangements with rights of reuse. Beneficiaries of such collateral arrangements thus only have a six-month period to make all their collateral arrangements compliant with Article 15 SFTR.

What do you have to do now?

- Review all your collateral arrangements to determine under which one you enjoy a right of use;
- Draft a disclosure document and define the terms pursuant to which you are allowed to use the collateral;
- For all future contracts, ensure compliance with your ex ante risk disclosure duty.

This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.
