



TEIGLAND-HUNT LLP

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T-H Reminder

Certain Risk Disclosures Are Required to Be Provided to European Counterparties by Today

Relevant to Article 15 of the EU Securities Financing Transactions Regulation ("SFTR")

Article 15 of the SFTR has been interpreted to require all counterparties, including buy side counterparties outside Europe, to inform their European counterparties of the risks involved in collateral arrangements that permit the reuse of posted securities. As a result, firms that receive securities collateral under such arrangements should send the SFTR Information Statement published by ISDA and other trade associations to all relevant EU counterparties.

Background

The "[SFTR](#)"* is intended to improve transparency in securities financing transactions ("SFTs") through reporting and record retention requirements. It also requires parties to "reuse arrangements" to provide disclosure to their counterparties of the risks and consequences involved in such arrangements (the "Reuse Disclosure Requirement"). While the reporting and record retention requirements of the SFTR apply to "securities financing transactions", defined broadly to include repos, securities and commodities lending and margin lending, the Reuse Disclosure Requirement applies not only to SFTs but also to other collateral arrangements where reuse or rehypothecation of collateral comprising financial instruments (e.g., securities) is permitted.

The Reuse Disclosure Requirement, which is set out in Article 15(1)(a) of the SFTR, provides that where a party (the "receiving counterparty") has a right to reuse financial instruments it has received as collateral, such right is subject to the condition that the counterparty providing the collateral (the "providing counterparty") is "duly informed in writing" by the receiving party of the risks and consequences involved in the reuse arrangement. The Reuse Disclosure Requirement comes into effect today and affects title transfer and security collateral arrangements under a variety of trading agreements, including SFT agreements and ISDA Master Agreements with a Credit Support Annex where reuse of securities collateral is permitted. The Reuse

Disclosure Requirement does not apply where the receiving counterparty only receives cash as collateral under the reuse arrangement.

Why Non-EU Entities Are Considered to Be Subject to the Reuse Disclosure Requirement

Although the majority of the SFTR's requirements apply only to European entities and European branches of non-EU entities, the Reuse Disclosure Requirement was drafted in such a broad manner that it has been interpreted to apply to non-EU receiving counterparties engaging in reuse where the reuse arrangement relates to financial instruments received from a providing counterparty that is established in the EU (or acting through a branch in the EU). As an example, a Cayman hedge fund that is managed by a U.S. investment adviser and is entitled to rehypothecate securities collateral received from a European counterparty under a New York law-governed ISDA Credit Support Annex is considered subject to the Reuse Disclosure Requirement.

The SFTR Information Statement

The Association for Financial Markets in Europe (AFME), the Futures Industry Association (FIA), the International Capital Market Association (ICMA), the International Swaps and Derivatives Association, Inc. (ISDA) and the International Securities Lending Association (ISLA) have jointly published a statement (the "SFTR Information Statement") that is intended to be used to comply with the Reuse Disclosure Requirement. It describes the general risks and consequences that may be involved in consenting to a right of use of collateral provided under a security collateral arrangement or of concluding a title transfer collateral arrangement. The SFTR Information Statement can be found in [ISDA's Bookstore](#).

Database of Contacts for Distribution of the SFTR Information Statement

To facilitate distribution of the SFTR Information Statement between market participants, ISDA has created a centralized database of contact details for institutions that expect to receive such statements. The ISDA web page containing the compiled database can be accessed here: <http://www2.isda.org/functional-areas/legal-and-documentation/disclosures/sftr-contact-details>.

Conclusion

Firms that reuse securities collateral posted by European trading counterparties, whether under title transfer or security collateral arrangements, should issue the SFTR Information Statement in respect of all existing and future arrangements with such counterparties.

**Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.*

If you have any questions regarding the matters described above, please contact one of the following:

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