

PUBLIC STATEMENT

Actions to mitigate the impact of COVID-19 on the EU financial markets – postponement of the reporting obligations related to securities financing transactions under the Securities Financing Transactions Regulation and under Markets in Financial Instruments Regulation

The European Securities and Markets Authority (ESMA) is made aware of the pressure on the financial industry to comply with the new regulatory obligations under Regulation (EU) 2015/2365¹ (SFTR) in a situation where it is already facing significant challenges due to the COVID-19 virus and the related actions taken by the different Member States to prevent its contagion.

This includes legislative measures and constraints imposed by EU and third-country authorities. Moreover, individual firms take actions to respond to the pandemic to protect their business and employees' health and they need to ensure core business continuity in extremely stressed market conditions. The impact on the personnel, exacerbated by the pressures on firms caused by increases in market volatility and volumes, has thus seriously compromised the SFTR implementation programmes.

In this respect, and in accordance with Article 31(2)(e) of Regulation (EU) No 1095/2010², ESMA is issuing this Public Statement to ensure coordinated supervisory actions needed in response to the effect of the aforementioned adverse events on the application of SFTR, and in particular on the requirements regarding the reporting start date.

SFTR mandates reporting of all Securities Financing Transactions (SFTs) to a registered Trade Repository (TR). TRs centrally collect and maintain the records of SFTs and they play a central role in enhancing the transparency of SFTs markets and reducing risks to financial stability.

SFTR envisages a phased-in approach as regards the counterparties subject to the reporting obligation. Reporting obligations for credit institutions, investment firms, and relevant third-country entities become applicable as of 13 April 2020, i.e. 12 months after the date of the entry into force of the relevant technical standards. These will be followed by the central counterparties (CCPs), central securities depositories (CSDs) and relevant third-country

¹ 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 (OJ L 337, 23.12.2015, p. 1)

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p. 84)

entities with a start of the reporting obligation on 13 July 2020, by insurance companies, funds, institutions for occupational retirement provision (IORPs) and relevant third-country entities on 12 October 2020 and non-financial counterparties on 11 January 2021.

SFTs with members of ESCB are exempted from reporting under Article 4 of SFTR, however these SFTs are reportable by investment firms as of 13 April 2020 under Article 26 of Regulation 600/2014 as specified by second subparagraph of Article 2(5) of Commission Delegated Regulation (EU) 2017/590.

ESMA is aware of the limited time left ahead of the SFT reporting obligation start date. The business as usual implementation by TRs and market participants is being continuously monitored.

In this context, ESMA understands that the SFT reporting implementation is now heavily impacted by the COVID-19 pandemic. Counterparties, entities responsible for reporting and report submitting entities and TRs face severe resource restrictions in implementing at the same time contingency plans to ensure the continuity of their operations and ongoing projects to meet new regulatory requirements.

ESMA acknowledges the challenges that the TRs, the relevant counterparties, the entities responsible for reporting or the report submitting entities and, to the extent applicable, investment firms, may face in finalising their implementation of the SFT reporting requirements and in completing the necessary technical set-up before 13 April 2020.

ESMA therefore expects competent authorities not to prioritise their supervisory actions towards counterparties, entities responsible for reporting and investment firms in respect of SFT reporting obligations, under SFTR and under MIFIR, as of 13 April 2020 and until 13 July 2020, including regarding to SFTs concluded in that period of time, and to generally apply their risk-based approach in the exercise of supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

Further, ESMA does not consider it necessary to register any TR ahead of 13 April 2020. This will give TRs more time to cope with the emergency and be ready to support the new reporting regime at a later point in time. ESMA is also not available to record the details of SFTs. As a result, counterparties, entities responsible for reporting and report submitting entities will be unable to report by the reporting start date.

ESMA expects TRs to be registered sufficiently ahead of the next phase of the reporting regime, i.e. 13 July 2020, for credit institutions, investment firms, CCPs and CSDs and relevant third-country entities to start reporting as of this date.

ESMA continues monitoring closely the evolution of the implementation by the relevant market participants as well as the impact of the relevant measures taken with regards to COVID-19 to ensure alignment of SFT reporting requirements and supervisory practices in the EU.