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Additional Information

Level 1 Regulation
Securities Financing Transactions Regulation (SFTR) Regulation (EU) 2015/2365- MDP

Topic
* Transaction reporting

Subject Matter
Reporting of SFTs by the FC on behalf of a SME-NFC pursuant to the Article 4(3) SFTR

Question
a) Which of the reportable details specified in the Commission Delegated Regulation (EU) 2019/356 of 13 December 2018 supplementing Regulation (EU) 2015/2365 should be provided by the SME-NFC to the FC to enable the latter to report on behalf of the SME-NFC pursuant to the Article 4(3) SFTR?
b) How should a FC proceed if the SME-NFC does not duly renew its LEI and therefore the

reports submitted on its behalf are rejected by a Trade Repository?
c) How should a FC proceed if an NFC that has been classified as an non-SME NFC changes its status to SME-NFC, but fails to timely inform the FC of this fact?
d) How should FC and SME-NFC proceed if they report to two different TRs? Do they need to onboard to the TR of their counterparty?

ESMA Answer

28-01-2021

Original language

[ESMA74-362-893 SFTR Q&A 8]

a) It is understood that the FC cannot be expected to possess the reportable div characterising the SME-NFC itself (e.g. sector of the reporting counterparty) nor the div of the execution and clearing arrangements entered into by the SME-NFC itself (e.g. NFC's broker or NFC's clearing member).

Therefore, having in mind the scope of information required under the Regulation (EU) 2019/356, it is understood that SME-NFC should provide to the FC particularly the following div:

Table 1 Counterparty data:

i. Field 1.3 Reporting counterparty ID (Legal Entity Identifier (LEI))

ii. Field 1.4 Nature of the reporting counterparty (Indication of whether the reporting counterparty is a financial or non-financial counterparty)

iii. Field 1.5 Sector of the reporting counterparty (Taxonomy for Non-Financial Counterparties. The categories from A to U correspond to the main sections of NACE classification as defined in Regulation (EC) No 1893/2006 of the European Parliament and of the Council[1])

iv. Field 1.6. Additional sector classification, if applicable

v. Field 1.7 Branch of the reporting counterparty

vi. Field 1.13 Beneficiary

vii. Field 1.14 Tri-party agent

viii. Field 1.15 Broker

ix. Field 1.16 Clearing member

x. Field 1.17 Central Securities Depository ('CSD') participant or indirect participant

xi. Field 1.18 Agent lender

Table 4 Re-use, cash reinvestment and funding sources data:

xii. Field 4.8 Value of reused collateral

xiii. Field 4.9 Estimated reuse of collateral

xiv. Field 4.12 Type of re-invested cash investment

xv. Field 4.13 Re-invested cash amount

The reportable div in fields 1.3, 1.4, and 1.5 ,and 1.6 and 1.7 if applicable, are static information not related to a specific SFT, meaning that they can be provided by the SME-NFC on a one-off basis and updated immediately each time when any of such detail's changes. Other reportable div specified in fields 1.13 to 1.18 should be provided for each SFT between the FC and the SME-NFC. Fields 4.8, 4.9, 4.12 and 4.13 as applicable, should be provided for each pair FC – SME-NFC.

If the SME-NFC has not provided to the FC the reportable div specified above, the FC should submit the missing reports without undue delay as soon as it receives all the relevant div.

b) Financial counterparty should timely liaise with the SME-NFC to so that the latter renews its LEI.

It should be noted that in accordance with Article 1(1) of Commission Delegated Regulation 2015/2365 supplementing SFTR "A report made pursuant to Article 4(1) of Regulation (EU)

2015/2365 shall include the complete and accurate div set out in Tables 1, 2, 3 and 4 of the Annex that pertain to the SFT concerned". The SME-NFC is responsible for ensuring that the div of the SFT provided to the FC are correct. As clarified in point (a), field 1.3 Reporting counterparty ID is one of the div that NFC should provide to the FC. Therefore, the SME-NFC should ensure that its LEI is correct (thus also valid and duly renewed) so that FC can perform the reporting of SFTs on its behalf.

If the SME-NFC has not timely renewed its LEI and therefore FC was not able to successfully report on behalf of SME-NFC, the FC should submit the missing reports without undue delay as soon as the LEI of the SME-NFC is renewed.

c) In accordance with article 4(3) SFTR, SME-NFC are those « which on its balance sheet dates does not exceed the limits of at least two of the three criteria laid down in Article 3(3) of Directive 2013/34/EU of the European Parliament and of the Council ».

Specifically, SME-NFC are defined in SFTR by reference to the definition of "medium-sized undertakings". A medium-sized undertaking does not exceed the limits of at least two of the three following criteria:

- Balance sheet total: EUR 20 000 000;
- Net turnover: EUR 40 000 000;
- Average number of employees during the financial year: 250.

In practice, this information should be included in the NFC's annual reports which is published annually.

To the extent possible, the SME-NFC should inform the FC of an anticipated change in its status ahead the publication of its annual report to avoid any disruption in the continuity of reporting.

Given that the status of the NFC is known and primarily assessed by the NFC itself, it is thus part of information that the FC cannot be reasonably expected to possess, it is understood that in the case where non-SME NFC has become an SME-NFC and does not inform the FC of this change, the FC may not be aware of its obligation to report on behalf of that SME-NFC.

When FC becomes aware of such change after the effective change of status, it should submit the missing reports pertaining to the SFTs that were concluded, modified or terminated after that date without undue delay. Such submissions should be done, upon

having received from the NFC all relevant div (as per (a) above) pertaining to these SFTs.

d) For any outstanding SFTs where an FC and an SME-NFC report to two different Trade Repositories, the outstanding SFT of the SME-NFC should be transferred to the TR of the FC, unless the FC decides to become client of the TR of the SME-NFC and report the SFT with the SME-NFC to that TR.

Each time a NFC changes its status from non-SME NFC to SME-NFC, it should transfer its outstanding SFT concluded with the FC to the TR of that FC as of the date of its changed status unless the FC decides to become client of the TR of the SME-NFC and report the SFT concluded with the SME-NFC to that TR. Similarly, each time when NFC changes its status from SME-NFC to non-SME NFC, the outstanding SFT concluded with the FC should be transferred back to the TR of the NFC, unless the NFC decides to become client of the TR of the FC and report the SFT concluded with the FC to that TR.

For the performance of data transfer, neither the NFC nor the FC (or any report submitting entity reporting on their behalf) are expected to onboard to the TRs of the other counterparty. The reference to TR participant should relate to the NFC and FC (or the report submitting entity reporting on their behalf), as appropriate.

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[1] ANNEX I Formats to be used for reports on the div of securities financing transactions, as referred to in Article 4(1) and (5) of Regulation (EU) 2015/2365