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By email: Nikolay.Arnaudov@esma.europa.eu; Patrick.Pearson@ec.europa.eu

14 January 2020

Dear Nikolay,
Dear Patrick,

The Alternative Investment Management Association¹ (“AIMA”; we) has read with interest the Final Report² of the European Securities and Markets Authority (“ESMA”) on Guidelines on reporting under Articles 4 and 12 SFTR³ (“the Final Report”).

AIMA’s members employ a variety of securities financing transactions (“SFTs”) to manage risk and deliver returns for their investors and we welcome the publication by ESMA of Guidelines to support the industry in their implementation of SFTR reporting requirements.

We are, however, deeply concerned that the Final Report includes a statement on the scope of SFTR Article 4 reporting that is fundamentally at odds with the drafting of the Level 1 SFTR text. This has the potential to cause significant and unwarranted compliance costs for firms that were not intended to be within the scope of Article 4 of SFTR.

Specifically, ESMA states at paragraph 132 of the Final Report that “AIFs managed by AIFM registered or authorised under AIFMD are subject to reporting under SFTR”. As a blanket statement, we believe this to be incorrect.

Article 4 of SFTR establishes a reporting obligation for “[c]ounterparties to SFTs”; Article 2 of SFTR further clarifies that the associated obligation is limited to an entity established: (i) in the Union, including all its branches irrespective of where they are located; (ii) in a third country, if the SFT is

¹ The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,000 corporate members in over 60 countries. AIMA’s fund manager members collectively manage more than \$2 trillion in hedge fund and private credit assets.

² Online at: https://www.esma.europa.eu/sites/default/files/library/esma70-151-2703_final_report_-_guidelines_on_reporting_under_sftr.pdf

³ 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. Hereafter: “SFTR”.

concluded in the course of the operations of a branch in the Union of that counterparty.” The branch limb of this scope provision is unlikely to be applicable to a fund and therefore the default position under SFTR is that non-EU AIFs will **not** be subject to Article 4 reporting obligation (in contrast to AIFs established within the EU). This position holds true regardless of the authorization status of the AIFM of the non-EU AIF in question.

Given the limited available time for implementation of SFTR reporting requirements, we as a matter of significant urgency call on the European Commission and ESMA to adopt a Frequently Asked Question (“FAQ”) to address this point and provide clarity to the market before significant sums are spent by non-EU AIFs on unnecessary build-out of SFTR reporting systems.

As a proposal, such an FAQ could read:

Questions:

(a) Does a Non-EU Alternative Investment Fund (Non-EU AIF) with a non-EU Alternative Investment Fund Manager (AIFM) fall within the scope of the reporting and recordkeeping obligations set out in Article 4 of the SFTR?

(b) Does a Non-EU Alternative Investment Fund (Non-EU AIF) with an EU authorised or registered Alternative Investment Fund Manager (AIFM) fall within the scope of the reporting and recordkeeping obligations set out in Article 4 of the SFTR?

Answer:

No, a Non-EU AIF is an entity established in a third-country, and thus is not subject to the reporting and recordkeeping obligations set out in Article 4 of the SFTR in relation to any SFTs it enters into, unless it does so through a branch established in the EU. For the purposes of Article 4 reporting and recordkeeping requirements, the location and authorisation status of the Non-EU AIF's AIFM are not relevant.

We would be happy to discuss this matter in further detail and would be grateful for a swift response to this submission.

Yours sincerely,

A handwritten signature in black ink that reads "Adam Jacobs-Dean". The signature is written in a cursive, flowing style.

Adam Jacobs-Dean
Head of Markets, Governance and Innovation
AIMA