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 MARKETS UNION
 Financial markets
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Mr. Adam Jacobs-Dean
 Head of Markets, Governance and
 Innovation
 AIMA

ajacobs-dean@aima.org

Subject: Scope of SFTR Article 4 reporting

Dear Mr. Jacobs-Dean,

Thank you for your letter dated 14 January 2020 concerning the scope of reporting requirements, in particular in relation to AIFs established in third-countries, under SFTR.

The reporting obligation in Article 4(1) of SFTR applies to ‘counterparties to SFTs’: “*Counterparties to SFTs shall report the details of any SFT they have concluded, as well as any modification or termination thereof, to a trade repository [...]*”. According to the definition in Article 3(2) of SFTR, “*counterparties’ means financial counterparties and non-financial counterparties*”. The financial counterparties listed in Article 3(3) SFTR include “*(e) an AIF managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU*” (therefore for the definition of financial counterparty the location of the AIF is not relevant, but only the authorisation status of the AIFM). However, Article 2(1) regarding the scope of the SFTR limits the application of the Regulation to “*(a) a counterparty to an SFT that is established (i) in the Union, including all its branches irrespective of where they are located; (ii) in a third country, if the SFT is concluded in the course of the operations of a branch in the Union of that counterparty*”. In this Article, no reference is made to the location or to the authorisation of the fund manager.

In the light of the above, Non-EU AIFs, i.e. AIFs not established in the Union, are not subject to the obligations set out in Article 4(1) SFTR, even if the AIFM is authorised or registered in accordance with Directive 2011/61/EU, except in respect of SFTs concluded in the course of the operations of a branch in the Union of the Non-EU AIF.

Yours sincerely,

Patrick Pearson
 Head of Unit

Contact:

Nina FRIEHS, Tel.: +32-2-2990856, bettina.friehs@ec.europa.eu

