

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

**United Kingdom**

**Ref: Reporting by non-EU AIF under Article 4 SFTR**

Dear Mr. Jacobs-Dean

I would like to thank you for your letter dated 14 January to the attention of ESMA and the European Commission. In your letter you refer to the recently published Final report and Guidelines on reporting under SFTR and you highlight some concerns related to the reporting of SFTs by certain types of AIFs.

I believe that it is worth clarifying the differences between the two documents, namely the explanatory part of the Guidelines contained in the Final report and the Guidelines themselves. In the Final report, ESMA has included a succinct summary of the proposals in the consultation paper, an assessment of the feedback received split between responses which have led to amendments of the Guidelines and others that have not been taken into account, as well as a description of certain characteristics related to market transactions which do not fall in the scope of the reporting obligation under Article 4 SFTR.

The Guidelines however contain all the clarifications and examples that have to be taken into account to ensure reporting in accordance with the regulatory framework under SFTR, namely the Level 1 regulation and the technical standards. Therefore, please note that the provisions relevant for the compliance by the relevant counterparties or entities responsible for reporting with the regulatory framework under SFTR are the ones contained in the Guidelines.

Moving to the specific issue brought to our attention, please note that the sentence to which you refer is in the section on allocation of responsibility for reporting, i.e. the one which explains how allocation of responsibility is put in practice in the case of entities which are in the scope of SFTR, and not on a section on the scope of entities subject to reporting obligation. This clarification opens the section on allocation of responsibility and it is indicated in paragraph 114 of the Final report. The reporting obligation under SFTR indeed applies only to “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”.

Furthermore, the sentence in paragraph 132 of the Final report to which you refer in your letter is part of the feedback that is not taken onboard. The main reason is that indeed it contradicts the scope of application of SFTR. Moreover, in paragraph 131 of that report ESMA has assessed the different use cases which might exist for AIF and the following is provided: “Under the AIFMD, there can indeed be an EU AIF which is managed by a non-EU AIFM or a registered EU AIFM to which SFTR is not applicable.”

In addition, in paragraph 61 of the Guidelines, it is mentioned “Where the allocation of responsibility under Article 4(3) SFTR is not applicable to the AIFM, i.e. the AIFM is not subject to SFTR, the responsibility to report SFTs to a TR remains with the fund.” Indeed, this is the case of an AIF that falls under Article 2(1)(a), but whose manager does not fall under Article 2(1)(c) SFTR.

As a result, we do not believe that there is a need for a Q&A on this topic.

Finally, having regard to the start of reporting for AIF under Article 4 of SFTR on 12 October 2020, we would like to remind you that section 4.20 of the Guidelines establishes the authorities’ expectations during the phased-in period.

I hope that the above clarifications are helpful. Should you have any further questions or concerns related to the reporting of SFTs by AIF and AIFM, please do not hesitate to contact me or the Market Data Policy team ([mdp@esma.europa.eu](mailto:mdp@esma.europa.eu)) in Markets and Data Reporting Department on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'F. Planta'.

Fabrizio Planta

Head of Markets and Data Reporting Department