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## SFTR and reuse of collateral.

On 12 January 2016, EU Regulation 2015/2365 on transparency of securities financing transactions and of reuse ('**SFTR**') came into force, as mentioned in our previous [alert](#).

The above regulation directly impacts the investment funds governed by Directive 2009/65/EC ("**UCITS**") and the managers of investment funds governed by Directive 2011/61/EU ("**AIFM**").

Article 15 of SFTR regarding the transparency of reuse of financial instruments received as collateral came into force on 13 July 2016. It applies to (i) existing collateral arrangements and (ii) new arrangements entered into after that date with respect to the above-mentioned entities.

From a practical standpoint, UCITS and AIFMs receiving collateral and willing to reuse it will have to ensure that the following conditions are satisfied before the right of reuse is exercised:

- Risk warning: their counterparty must be informed in writing of the risks and consequence of either granting a right of use of the collateral under a securities collateral arrangement ('**SCA**')\*, or concluding a title transfer collateral agreement ('**TTCA**')\*\*;
- Consent: the counterparty providing the collateral must grant its prior express consent, as evidenced by signature, in writing, or legally equivalent manner, to the terms which provide the right of use in the case of an SCA, or expressly agree to provide collateral by way of a TTCA; and,
- Compliance: the reuse shall be undertaken in accordance with the terms of the collateral arrangement and the financial instruments received shall be transferred from the account of the providing counterparty.

The above conditions apply to any title transfer or security interest collateral arrangement involving financial instruments (including repos, stock loans, ISDAs with CSAs/CSDs, repackaging, prime brokerage arrangements, secured financing where security documents provide for a right of reuse).

When UCITS and AIFMs provide collateral to counterparties willing to reuse it, the above conditions will apply the other way round.

For more information, please read our [brochure](#) on SFTR or alternatively contact a member of your Linklaters team who will be delighted to provide you with any further clarification on these new changes.

\* In accordance with Article 5 of Directive 2002/97/EC.

\*\* "Title Transfer Collateral Arrangement" means a title transfer financial collateral arrangement as defined in point (b) of Article 2(1) of Directive 2002/47/EC concluded between counterparties to secure any obligation.

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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