Linklaters

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Securities Financing Transactions.

Introduction

On 12 January 2016, EU Regulation 2015/2365 on transparency of securities financing transactions and of reuse ('**SFTR**') came into force.

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.

From a practical standpoint, where a counterparty to either a title transfer collateral arrangement (e.g. a security transfer of title) or a security collateral arrangement (e.g. a pledge) is granted a right of reuse over financial instruments received as collateral, that right is subject to the following conditions:

- Risk warning: the collateral-taker must inform the collateral-provider in writing of the risks and consequences arising from granting a right of reuse of the collateral under a security collateral arrangement or concluding a title transfer collateral arrangement (at least of the risks and consequences in a default situation of the collateral-taker);

- Consent: the collateral-provider must have expressly agreed to provide collateral by way of a title transfer collateral arrangement, or have granted its prior express consent as evidenced by a signature in writing, or legally equivalent manner, to the terms which provide the right of use in the case of a security collateral arrangement;

- Compliance: the reuse shall be undertaken in accordance with the terms of the collateral arrangement and the financial instruments received under the collateral arrangement shall be transferred from the account of the providing counterparty (or, where one party is a non-EU person and the collateral-provider's account is maintained in a third country, the reuse must be evidenced by a transfer or other appropriate means).

The SFTR applies to a counterparty engaged in reuse that is established in the EU (in which case all its branches wherever located are included) or that is not established in the EU where either the reuse is effected in connection with an EU branch or the reuse concerns financial instruments provided under a collateral arrangement by an EU counterparty or an EU branch of a non-EU counterparty.

Member States are required to provide competent authorities (which, for Luxembourg purposes, would be the *Commission de Surveillance du Secteur Financier*) with the power to impose administrative sanctions and other measures for failing to comply with article 15 of SFTR, without prejudice to the right of Member States to impose criminal sanctions. Member States must also confer minimum powers on competent authorities for sanctioning breaches, including public censure, withdrawal or suspension of authorisations, minimum monetary sanctions depending on the identity of the party and the nature of the breach, and temporary bans on the exercise of managerial responsibilities. Member States may, however, impose additional powers and provide for greater penalties than the minimums specified in the SFTR.

In addition, competent authorities will need to establish effective mechanisms to enable reporting of infringements to article 15 of SFTR and counterparties will be required to have in place appropriate internal procedures for their employees to report such infringements to the competent authorities. No measures have yet been taken by the Luxembourg legislation or the Luxembourg competent authority to implement the above requirements.

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.

Contacts

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