Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2019/363. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2019 No. 363 may be subject to amendment by EU Exit Instruments made by both the Financial Conduct Authority and the Bank of England under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 5. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Implementing Regulation (EU) 2019/363 of 13 December 2018 laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2019/363

of 13 December 2018

laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to 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[(1)], and in particular Article 4(10) thereof,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[(2)] and in particular Article 9(6) thereof,

Whereas:

(1) The details reported by securities financing transaction ('SFT') counterparties to trade repositories or the European Securities and Markets Authority ('ESMA') should be submitted in a harmonised format in order to facilitate data collection, aggregation and comparison across trade repositories. To minimise costs for the reporting counterparties, the reporting format for SFTs should be consistent, to the extent feasible, with that prescribed for the reporting of derivatives contracts under Article 9 of Regulation (EU) No 648/2012 of the European Parliament and of the Council. This Regulation therefore prescribes the format for each of the fields to be reported and standardises a report by reference to an ISO standard that is widely used in the financial industry.

(2) The global legal entity identifier ('LEI') system has now been fully implemented and each counterparty to an SFT should therefore only use that system to identify a legal entity in a report. For the counterparty's use of the LEI system to be effective, that counterparty should ensure that the reference data related to its LEI are renewed in accordance with the terms of an accredited LEI issuer (Local Operating Unit). An extension of the global LEI system to identify branches of legal entities is currently

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being developed. Until such time as that extension is finalised and considered suitable for the purposes of reporting SFTs, and this Regulation is amended accordingly, the ISO code of the country where the branch is located should be used to identify that branch where an SFT is concluded through a branch office of a counterparty.

(3) A global unique trader identifier ('UTI') system for identifying SFTs is also being developed. Until such time as that global UTI system is finalised and considered suitable for the purposes of reporting SFTs, and this Regulation is amended accordingly, a UTI agreed by the counterparties should be used to identify a SFT.

(4) Article 4a of Commission Implementing Regulation (EU) No 1247/2012[(3)] contains a procedure to determine the entity responsible for generating a UTI in respect of the reporting of derivatives contracts for those situations where counterparties fail to agree on the entity responsible for generating the UTI. To ensure consistency between the reporting of derivatives contracts and of SFTs, a similar procedure should be set up for counterparties reporting SFTs.

(5) Currently, there is no common market practice for determining the counterparty side in an SFT. Therefore, specific rules should be established to ensure the accurate and consistent identification of the collateral provider and of the collateral taker in an SFT.

(6) A number of reports may be submitted for a single SFT, for example if successive modifications are made to that SFT. In order to ensure that each report relating to an SFT, and each SFT as a whole, is properly understood, reports should be submitted in the chronological sequence in which the reported events occurred.

(7) To lessen the burden of reporting the modification of certain values, and in particular the details of collateral value, of margin posted or received and of collateral reuse, those details should be reported as they stand at the end of each day only if they vary from previously reported details.

(8) The details of an outstanding margin loan should be reported as they stand at the end of each day, where there is a net cash debit in base currency or where a counterparty's short market value is positive.

(9) The market value of securities lent or borrowed should be reported as it stands at the end of each day. Similarly, when the counterparties report the market value of collateral, they should do so as it stands at the end of each day.

(10) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission, pursuant to the procedure in Article 15 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)[(4)].

(11) ESMA has conducted open public consultations on these draft implementing technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

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(12) As it is the case for the reporting of SFTs, certain identifiers and codes to be used for the reporting of derivative contracts are still being developed. Until such time as those identifiers and codes are available, considered suitable for the purposes of reporting and Implementing Regulation (EU) No 1247/2012 has been amended accordingly, that Regulation provides for the use of an ISO 10692 CFI code to classify derivatives for which an ISO 6166 ISIN code or an AII code are not available, and for the use of a unique trade identifier agreed by the counterparties to identify a derivative report. To ensure legal certainty as regards the appropriate procedure to amend the requirements applicable to the reporting of derivatives contracts, and the required degree of consistency between the reporting of derivatives and of SFTs, Implementing Regulation (EU) No 1247/2012 should only refer to the requirements currently applicable to that reporting.

(13) Implementing Regulation (EU) No 1247/2012 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Data standards and formats for SFT reports

The details of an SFT in a report to be submitted pursuant to Article 4(1) of Regulation (EU) 2015/2365 shall be provided in accordance with the standards and formats specified in Tables 1 to 5 of Annex I. That report shall be provided in a common electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

Article 2

Identification of counterparties and other entities

1 The report referred to in Article 1 shall use an ISO 17442 legal entity identifier ('LEI') code to identify the following:

a a beneficiary which is a legal entity;

b a broking entity;

c a central counterparty ('CCP') authorised in accordance with Regulation (EU) No 648/2012;

d a clearing member;

e an agent lender;

f a central securities depository ('CSD') participant;

g a counterparty which is a legal entity;

h a tri-party agent;

i a report submitting entity;

j an issuer of a security which was lent, borrowed or provided as collateral in a SFT.

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2 A counterparty to an SFT shall ensure that the reference data related to its ISO 17442 LEI code is renewed in accordance with the terms of any of the accredited Local Operating Units of the Global LEI System.

3 Where an SFT is concluded through a branch of a counterparty, the report referred to in Article 1 shall use the code specified in Field 7 and in Field 8 of Table 1 of Annex I to identify that branch of a counterparty.

Article 3

Unique Trade Identifier

1 A report shall be identified through a unique trade identifier ('UTI') agreed by the counterparties in accordance with the format specified in Field 1 of Table 2 of Annex I.

2 Where counterparties fail to agree on the entity responsible for generating UTI to be assigned to the report, the counterparties shall determine the entity responsible for generating a UTI in accordance with the following:

a for centrally-executed and cleared SFTs, the UTI shall be generated at the point of clearing by the CCP for the clearing member. Another UTI shall be generated by the clearing member for its counterparty;

b for centrally-executed but not centrally-cleared SFTs, the UTI shall be generated by the trading venue of execution for its member;

c for centrally-confirmed and cleared SFTs, the UTI shall be generated by the CCP for the clearing member at the point of clearing. Another UTI shall be generated by the clearing member for its counterparty;

d for SFTs that were centrally-confirmed by electronic means but were not centrally-cleared, the UTI shall be generated by the trade confirmation platform at the point of confirmation;

e for all SFTs other than those referred to in points (a) to (d), the following shall apply:

(i) where financial counterparties conclude an SFT with non-financial counterparties, the financial counterparties shall generate the UTI;

(ii) for all securities lending or borrowing transactions other than those referred to in point (i), the collateral provider as referred to in Article 4 shall generate the UTI;

(iii) for all SFTs other than those referred to in points (i) and (ii), the collateral taker as referred to in Article 4 shall generate the UTI.

3 The counterparty generating the UTI shall communicate that UTI to the other counterparty in a timely manner so that the latter is able to meet its reporting obligation.

Article 4

Counterparty side

1 The counterparty side to the SFT referred to in Field 9 of Table 1 of Annex I shall be identified in accordance with paragraphs 2 to 4.

2 In the case of repurchase transactions, buy-sell back transactions and sell-buy back transactions, the counterparty that buys securities, commodities, or guaranteed rights relating

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to title to securities or commodities in the opening or spot leg of the trade and agrees to sell them at a specified price on a future date in the closing or forward leg of the trade, shall be identified as the collateral taker in Field 9 of Table 1 of Annex I. The counterparty that sells those securities, commodities, or guaranteed rights shall be identified as the collateral provider in Field 9 of Table 1 of Annex I.

3 In the case of securities or commodities borrowing transactions and securities or commodities lending transactions, the counterparty that lends the securities or commodities on condition that the borrower will return equivalent securities or commodities on a future date or at the request of the transferor, shall be identified as the collateral taker in Field 9 of Table 1 of Annex I. The counterparty that borrows those securities or commodities shall be identified as the collateral provider in Field 9 of Table 1 of Annex I.

4 In the case of margin lending transactions, the borrower, that is the counterparty to which credit is extended in exchange for collateral, shall be identified as the collateral provider in Field 9 of Table 1 of Annex I. The lender, that is the counterparty that provides the credit in exchange for collateral, shall be identified as the collateral taker in Field 9 of Table 1 of Annex I.

Article 5

Frequency of SFT reports

1 All reports of the details of an SFT specified under Article 1(2) of Commission Delegated Regulation (EU) 2019/356[(5)] be provided in the chronological order in which the reported events occurred.

2 A counterparty to a margin lending transaction shall report the details of the outstanding margin loan as they stand at the end of each day, where there is a net cash debit in base currency or where a counterparty's short market value is positive.

3 A counterparty to an outstanding SFT shall report any modification of the details relating to the collateral data in Fields 75 to 94 of Table 2 of Annex I with action type 'Collateral update'. The counterparty shall report those modified details as they stand at the end of each day until it reports the termination of the SFT, or it reports the SFT with action type 'Error', or until the SFT reaches its maturity date, whichever is the earlier.

4 A counterparty to an outstanding SFT shall report any modification of the end-of-day market value of the securities lent or borrowed in Field 57 of Table 2 of Annex I with action type 'Valuation update'. The counterparty shall report that modified market value as it stands at the end of each day until it reports the termination of the SFT, or it reports the SFT with action type 'Error', or until the SFT reaches its maturity date.

5 A counterparty shall report any modification of the total amount of margin posted or received for all cleared SFTs as it stands at the end of the day in Fields 8 to 19 of Table 3 of Annex I with action type 'Margin update' after it has first reported the total amount of margin posted or received with action type 'New'.

6 A counterparty shall report any modification of the value of reused collateral, reinvested cash and the funding sources with action type 'Reuse update' as it stands at the end of the day in Fields 8 to 14 of Table 4 of Annex I after it has reported the relevant values with action type 'New'.