

Obligations and Next Steps for Regulated Firms under SFTR

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SFTR – an overview

What is SFTR?

- Financial Stability Board (FSB) and European Systemic Risk Board (ESRB) recommendation following the global financial crisis to lower risks inherent in securities financing markets by increasing transparency in shadow banking and in the use of securities lending and repo trading.
- EU response: **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.**

- Rules set out across 3 levels of regulations:

Level 1 - SFTR - Regulation (EU) 2015/2365

Level 2 – Technical Standards (Regulatory and Implementing):

- 2019/356 RTS on the details of SFTs to be reported to TRs under SFTR
- 2019/357 RTS on access to details of SFTs held in TRs
- 2019/358 RTS on the collection, verification, aggregation, comparison and publication of data on SFTs by TRs
- 2019/359 RTS on registration and extension of registration of TRs under SFTR
- 2019/363 ITS on format and frequency of the reports to TRs under SFTR
- 2019/364 ITS on registration and extension of registration under SFTR
- 2019/365 ITS on exchange of information on sanctions, measures, investigations under SFTR

Level 3 – Guidelines, ESMA Q&A

What are SFTs?

- The Regulation covers any securities financing transaction (**SFT**) where securities are used to borrow cash (or vice versa).
 - a repurchase transaction (repo);
 - securities or commodities lending and borrowing;
 - a buy-sell back or sell-buy back transaction;
 - a margin lending transaction;

In each case, ownership of the asset is first transferred and then reverts again to the original owner.

Asset exceptions

- SFTR **does not** include derivative contracts already reported under EMIR but **does** include liquidity swaps and collateral swaps.
- SFTR **does not** include SFT transactions with the European System of Central Banks ('ESBC'), with other EU public bodies managing public debt or with the Bank for International Settlements (reported under MiFIR).

SFTR – key provisions

Entities subject to the mandatory reporting obligation to report SFTs to authorised trade repositories

- SFTR introduces the obligation for all market participants, including both financial and non-financial counterparties, to report details of SFTs to authorised trade repositories.
- SFTR gives European supervisory authorities access to information about SFTs in order to improve risk monitoring tools and consequently enhance the safety of financial markets.
 - Investment firms (authorised under MiFID II),
 - Credit institutions (authorised under CRD),
 - Insurers / reinsurers (authorised under Solvency II Directive),
 - UCITS (Undertakings for Collective Investment in Transferable Securities) management companies,
 - AFI (Alternative Investment Funds) management companies,
 - Pension funds,
 - CCPs (authorised under EMIR),
 - CSDs (authorised under CSDR),
 - Non-financial entities.

In-scope:

- All EU financial and non-financial counterparties, including branches operating outside the EU,
- EU branches of third country entities acting as counterparties, which would require an EU licence if they were based in the EU.

SFTR addresses three key requirements:

- **Transparency of reuse of collateral**
 - A collateral taker may only reuse it if the collateral giver has been informed of the related risks and has given written consent;
- **Transparency towards investors**
 - AIF and UCITS fund managers must disclose use of SFTs to investors
- **Transparency of SFTs**
 - Transaction counterparties must report new, modified or closed SFTs to an authorised trade repository by close of business on the next working day (T+1)

Transparency of reuse of collateral

SFTR Article 15

Reuse of financial instruments received under a collateral arrangement

Any right of counterparties to reuse financial instruments received as collateral should be subject to at least both of the following conditions:

(a) the collateral giver has been informed in writing by the collateral taker of the risks and consequences that may be involved in either:

- (i) granting consent to the right to reuse collateral provided under a security collateral arrangement in accordance with the Financial Collateral Arrangements Directive 2002/47/EC;
- (ii) concluding a collateral arrangement with transfer of title;

(b) the collateral giver has granted its prior express consent, as evidenced by a signature, in writing or in a legally equivalent manner, to a security collateral arrangement, which provide a right of use in accordance with with the Financial Collateral Arrangements Directive 2002/47/EC, or has expressly agreed to provide collateral by means of collateral arrangement with transfer of title.

With regard to point (a), the collateral giver shall at least be informed in writing of the risks and consequences that may arise in the event of the default of the collateral receiver.

Right to reuse collateral shall be subject to at least both of the following conditions:

- (a) reuse is undertaken in accordance with the terms specified in the collateral arrangement between the parties;
- (b) the financial instruments received under a collateral arrangement are transferred from the account of the collateral giver.

Transparency towards investors

SFTR Articles 13 and 14

Transparency of collective investment undertakings in periodical reports

UCITS management companies and UCITS investment companies shall inform investors on the use they make of SFTs in half-yearly and annual reports

AIFMs shall inform investors on the use they make of SFTs in an annual report

SFTs which UCITS management companies or UCITS investment companies, and AIFMs respectively, are authorised to use must be described in the relevant prospectus and include a clear statement that those transactions and instruments are used.

Transparency of SFTs

SFTR Article 4

Reporting obligation and safeguarding in respect of SFTs

1. Counterparties to SFTs shall report the details of any SFT they have concluded, as well as any modification or termination, to a registered trade repository no later than the working day following the conclusion, modification or termination of the transaction.
2. A counterparty which is subject to the reporting obligation may delegate the reporting of the details of SFTs.
3. Where a financial counterparty concludes an SFT with a non-financial counterparty which is a SME, the financial counterparty shall be responsible for reporting on behalf of both counterparties.
4. Where a UCITS managed by a management company is the counterparty to SFTs, the management company shall be responsible for reporting on behalf of that UCITS.
5. Where an AIF is the counterparty to SFTs, its AIFM shall be responsible for reporting on behalf of that AIF.
6. Counterparties shall keep a record of any SFT that they have concluded, modified or terminated for at least five years following the termination of the transaction.
7. Where a trade repository is not available to record the details of SFTs, counterparties shall ensure that those details are reported to ESMA.

Transparency of SFTs - continued

SFTR Article 4

Details of SFT reports sent to TRs need to include:

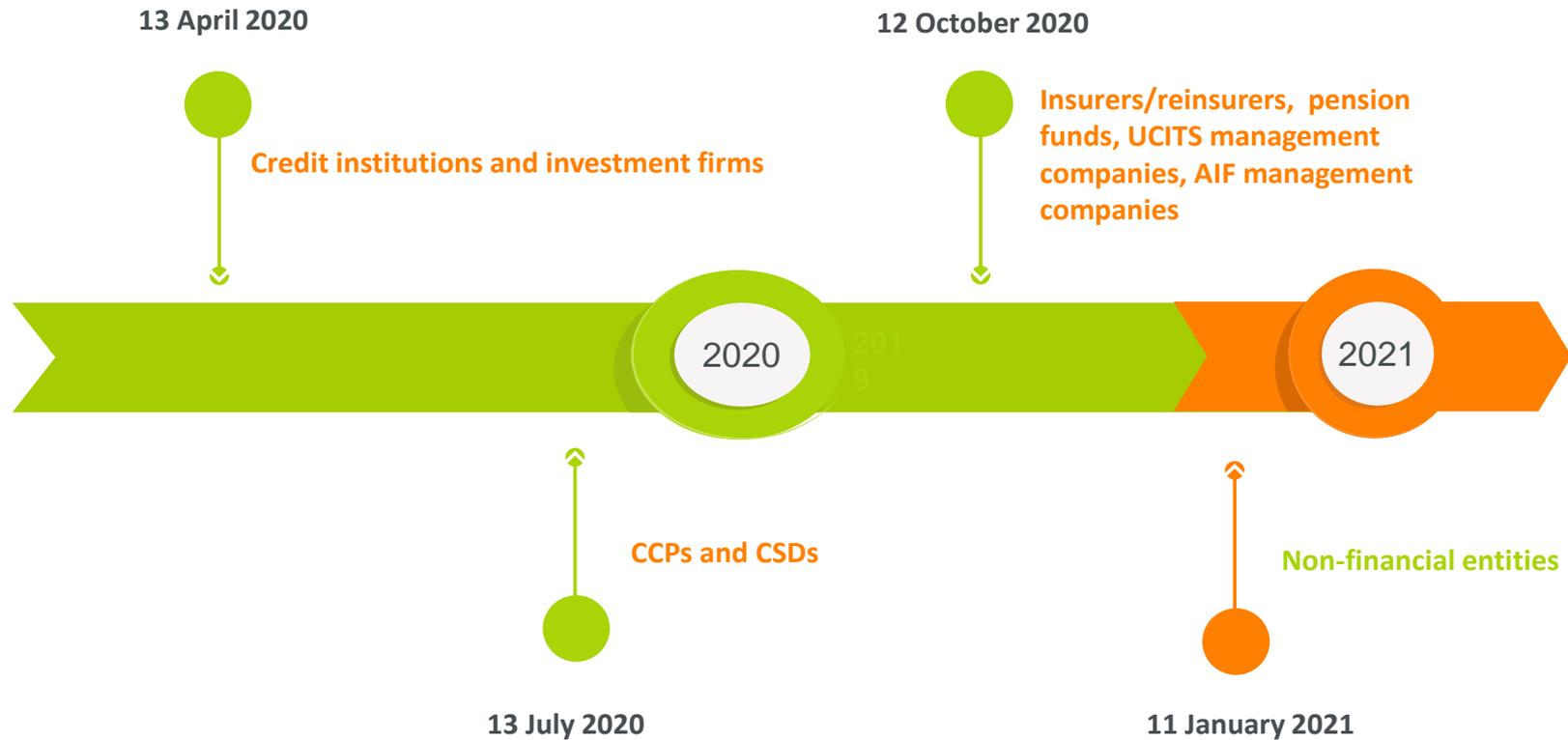
- (a) the parties to the SFT and, where different, the beneficiary of the rights and obligations arising from the SFT;
- (b) the principal amount; the currency; the assets used as collateral and their type, quality, and value; the method used to provide collateral; whether collateral is available for reuse; in cases where the collateral is distinguishable from other assets, whether it has been reused; any substitution of the collateral; the repurchase rate, lending fee or margin lending rate; any haircut; the value date; the maturity date; the first callable date; and the market segment;
- (c) depending on the SFT, details of the following:
 - (i) cash collateral reinvestment;
 - (ii) securities or commodities being lent or borrowed.

In order to maintain consistency, SFT reports need to include:

- (a) global legal entity identifiers (LEIs), or pre-LEIs;
- (b) international securities identification numbers (ISINs); and
- (c) unique trade identifiers.

SFTR – reporting to the TR

Phased introduction of reporting obligation



Reports sent to the TR

- Counterparties are required to complete and send SFT reports in accordance with ESMA's Reporting Technical Standards and Implementing Technical Standards.
- Reports contain 155 fields to be completed in the following categories:
 - Counterparty data
 - Loan and collateral data
 - Margin data
 - Re-use, cash reinvestment and funding sources data
- Reports need to be sent using the ISO 20022 standard for reporting to trade repositories.

SFTR and EMIR reporting compared

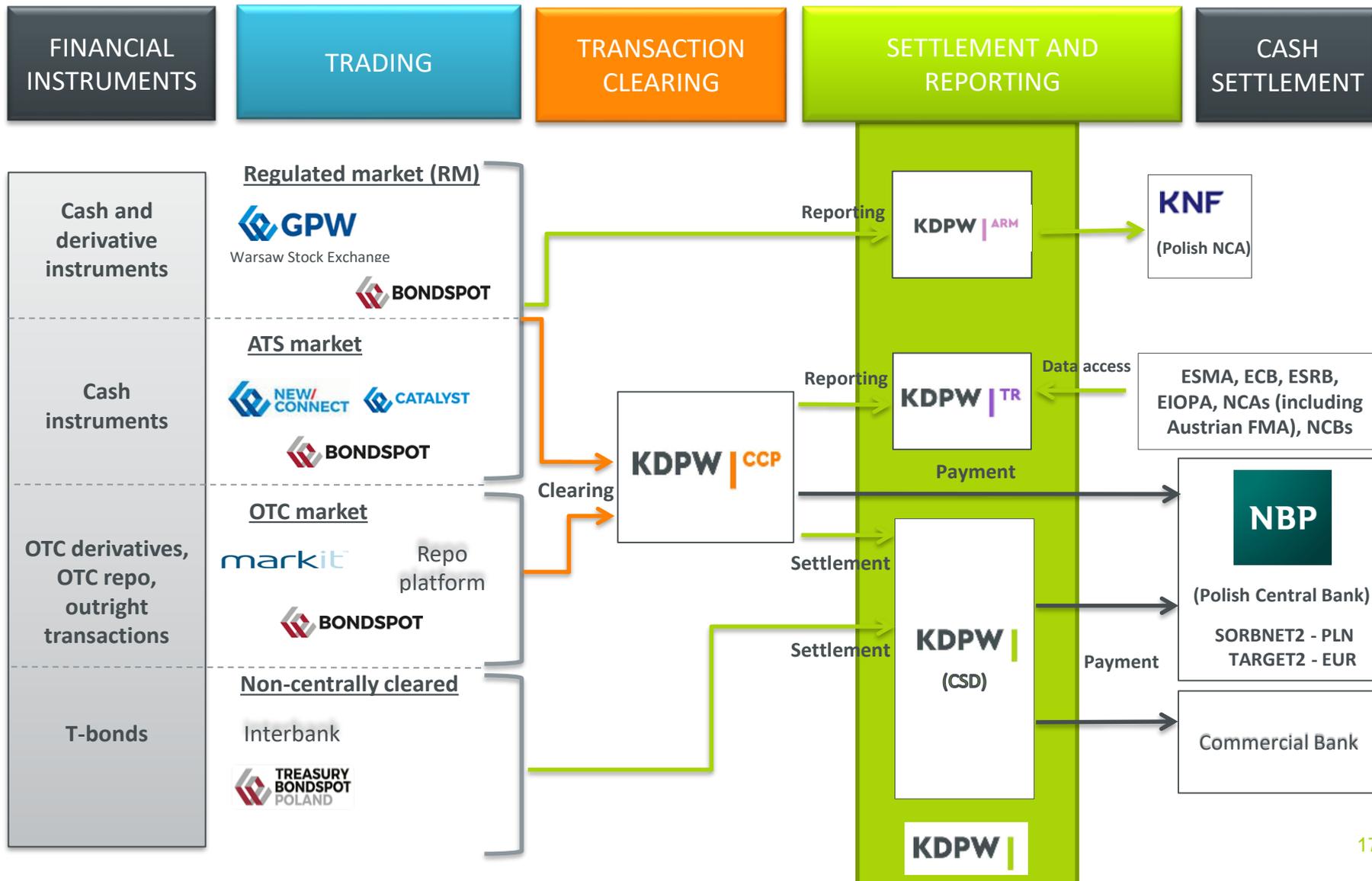
- Both regimes enable the financial dependencies between counterparties to be assessed and monitored for derivatives and SFTs.
- SFTR copies many solutions applied in EMIR to:
 - use existing infrastructure (a TR may be authorised under EMIR and SFTR)
 - use existing reporting practices and processes used by market participants
- SFTR and EMIR transactions mutually exclusive (no reporting overlap).
- Much of the reported data similar under both regimes (e.g. counterparty details).
- Both counterparties prepare and send a report.
- Reporting may be delegated to a 3rd party provider.

Principal differences between SFTR and EMIR reporting:

- Different types of transactions under both regimes, different approach.
- ISO 20022 under SFTR; mix of standards under EMIR.
- Phased approach for counterparty reporting obligation, depending on its type

KDPW Trade Repository Services

Overview of the capital market infrastructure in Poland



About KDPW_TR:

- On 7 November 2013, the KDPW Trade Repository (KDPW_TR) was registered by the European Securities and Markets Authority (ESMA), confirming that the KDPW Trade Repository fulfils all requirements applicable to trade repositories under EMIR.
- The KDPW_TR is one of seven trade repositories to be registered in the EU. It is the only trade repository operating in the CEE region.
- KDPW_TR was launched on 23 January 2014 and operates under the Trade Repository Rules.
- In September 2019, KDPW_TR applied for authorisation to operate under SFTR, with approval expected before Q2 2020.
- Since its launch in early 2014, KDPW_TR has:
 - Processed **over 1.4 billion reports**
 - Serviced **over 25 thousand counterparties**
 - Admitted **over 250 participants**
 - Reported **over 217 million transactions**

KDPW_TR: preparing for SFTR Reporting

- Fees will be very competitive and will offer advantages for low-volume reporting entities.
- KDPW_TR is finalising work on a GUI to enable access by reporting entities to the SFTR reporting system.
- KDPW_TR will develop on-line validation of reports submitted by reporting entities. This means feedback is sent to reporting entities immediately. During this short period, all formal and essential validation is performed. After a few seconds, the reporting entity knows if a given report has been accepted by KDPW_TR or rejected - and if so, the reason for the rejection.
- A protected learning and test environment will be provided for reporting entities free of charge.
- A complete set of Functional System Documentation will be provided, including:
 - Description of all processes,
 - Full set of validation rules, with error codes and description of reasons for rejection,
 - XML message flow,
 - Flow of status of reports.
- Workshops and training for reporting entities.
- Providing professional customer service – on-going telephone and email support.

For more information on KDPW_TR, please visit:

www.kdpw.pl