

**INVESTMENT FUNDS (SECURITIES FINANCING TRANSACTIONS)
INSTRUMENT 2016**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force as follows:
- (1) Annex A (Glossary) and Parts 1 of Annexes B and C come into force on 23 September 2016.
 - (2) The remainder of this instrument comes into force on 13 January 2017.

Amendments to the Handbook

- C. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Collective Investment Schemes sourcebook (COLL)	Annex B
Investment Funds sourcebook (FUND)	Annex C

Notes

- D. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

European Union Legislation

- E. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the Official Journal of the European Union is deemed authentic.

Citation

- F. This instrument may be cited as the Investment Funds (Securities Financing Transactions) Instrument 2016.

By order of the Board
22 September 2016

Annex A

Amendments to the Glossary of definitions

Comes into force on 23 September 2016

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>Securities Financing Transactions Regulation</i>	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 (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2365).
<i>SFTR</i>	<i>Securities Financing Transactions Regulation</i> .
<i>total return swap</i>	(in <i>COLL</i> and <i>FUND</i>) a derivative contract defined in article 3(18) of the <i>Securities Financing Transactions Regulation</i> .

Amend the following as shown.

<i>securities financing transaction</i>	(1)	...
	(1A)	<u>(in <i>COLL</i> and <i>FUND</i>) a transaction defined in article 3(11) of the <i>Securities Financing Transactions Regulation</i> as follows:</u>
	(a)	<u>a repurchase transaction, as defined in article 3(9) of the <i>SFTR</i>;</u>
	(b)	<u>securities or commodities lending and securities or commodities borrowing as defined in article 3(7) of the <i>SFTR</i>;</u>
	(c)	<u>a buy-sell back transaction or sell-buy back transaction as defined in article 3(8) of the <i>SFTR</i>; and</u>
	(d)	<u>a margin lending transaction as defined in article 3(10) of the <i>SFTR</i>.</u>
	(2)	...

[*Editor's note:* The guidance formerly found at *COLL 4.5.8-AG* has been deleted and moved to new *COLL 4.5.8ADG* in this instrument for Handbook numbering reasons only.]

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text.

Part 1: Comes into force on 23 September 2016

4 Investor Relations

...

4.2 Pre-sale notifications

...

Table: contents of the prospectus

...

Information to be provided on securities financing transactions and total return swaps

- 4.2.5A G (1) The Securities Financing Transactions Regulation sets out the additional information which:
- (a) an authorised fund manager of a UCITS scheme must include in the UCITS scheme prospectus; and
 - (b) an authorised fund manager who is a full-scope UK AIFM of a non-UCITS retail scheme must make available to investors before they invest.
- (2) COLL 4.2.5BEU and COLL 4.2.5CEU copy out the relevant provisions of that regulation.
- (3) An authorised fund manager who is a full-scope UK AIFM of a non-UCITS retail scheme should publish the information in the scheme's prospectus.
- (4) An authorised fund manager of a UCITS scheme or a non-UCITS retail scheme that does not use securities financing transactions or total return swaps is not required to include the information in COLL 4.2.5CEU in the prospectus or other pre-sale documents.

[Note: A transitional provision applies to COLL 4.2.5AG: see COLL TP 1.38G]

4.2.5B EU

<u>Transparency of collective investment undertakings in pre-contractual documents</u>	
1.	<u>The UCITS prospectus referred to in Article 69 of Directive 2009/65/EC, and the disclosure by AIFMs to investors referred to in Article 23(1) and (3) of Directive 2011/61/EU shall specify the SFT and total return swaps which UCITS management companies or UCITS investment companies, and AIFMs respectively, are authorised to use and include a clear statement that those transactions and instruments are used.</u>
2.	<u>The prospectus and the disclosure to investors referred to in paragraph 1 shall include the data provided for in Section B of the Annex.</u>
[Note: article 14(1) and (2) of the <i>Securities Financing Transactions Regulation</i> and article 3 for relevant definitions]	

4.2.5C EU

<u>Information to be included in the UCITS Prospectus and AIF disclosure to investors:</u>	
-	<u>General description of the SFTs and total return swaps used by the collective investment undertaking and the rationale for their use.</u>
-	<u>Overall data to be reported for each type of SFTs and total return swaps</u>
-	<u>Types of assets that can be subject to them.</u>
-	<u>Maximum proportion of AUM that can be subject to them.</u>
-	<u>Expected proportion of AUM that will be subject to each of them.</u>
-	<u>Criteria used to select counterparties (including legal status, country of origin, minimum credit rating).</u>
-	<u>Acceptable collateral: description of acceptable collateral with regard to asset types, issuer, maturity, liquidity as well as the collateral diversification and correlation policies.</u>
-	<u>Collateral valuation: description of the collateral valuation methodology used and its rationale, and whether daily mark-to-market and daily variation margins are used.</u>
-	<u>Risk management: description of the risks linked to SFTs and total return swaps as well as risks linked to collateral management, such as operational, liquidity, counterparty, custody and legal risks and,</u>

	<u>where applicable, the risks arising from its reuse.</u>
-	<u>Specification of how assets subject to SFTs and total return swaps and collateral received are safe-kept (e.g. with fund custodian).</u>
-	<u>Specification of any restrictions (regulatory or self-imposed) on reuse of collateral.</u>
-	<u>Policy on sharing of return generated by SFTs and total return swaps: description of the proportions of the revenue generated by SFTs and total return swaps that is returned to the collective investment undertaking, and of the costs and fees assigned to the manager or third parties (e.g. the agent lender). The prospectus or disclosure to investors shall also indicate if these are related parties to the manager.</u>
<u>[Note: section B of the annex to the <i>Securities Financing Transactions Regulation</i> and article 3 for relevant definitions.]</u>	
<u>[Note: AUM means assets under management.]</u>	

...

8 Qualified investor schemes

...

8.3 Investor relations

...

Table: contents of qualified investor scheme prospectus

...

Pre-sale information to be made available on securities financing transactions and total return swaps

- 8.3.4A G (1) The *Securities Financing Transactions Regulation* sets out the additional information which an authorised fund manager who is a full-scope UK AIFM of a qualified investor scheme must make available to investors before they invest.
- (2) COLL 4.2.5BEU and COLL 4.2.5CEU copy out the relevant provisions of that regulation.
- (3) An authorised fund manager who is a full-scope UK AIFM of a qualified investor scheme should publish the information in the scheme prospectus.
- (4) An authorised fund manager of a qualified investor scheme that does not use securities financing transactions or total return swaps is not

required to include the information in COLL 4.2.5CEU in the prospectus or other pre-sale documents.

[**Note:** A transitional provision applies to COLL 8.3.4AG: see COLL TP 1.39G]

...

TP 1 Transitional Provisions

TP1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
...					
38	<u>COLL 4.2.5AG</u>	G	<u>An authorised fund manager of a UCITS scheme or a non-UCITS retail scheme does not need to comply with the provisions of the Securities Financing Transactions Regulation referred to in COLL 4.2.5AG for:</u>	<u>From 23 September 2016 until 12 July 2017</u>	<u>23 September 2016</u>
			(1) <u>a sub-fund that was constituted before 12 January 2016 if the scheme is an umbrella; and</u>		
			(2) <u>a scheme that was constituted before 12 January 2016, if the scheme is not an umbrella.</u>		
			<u>[Note: article 33(2)(c) of the Securities Financing Transactions Regulation]</u>		
39	<u>COLL 8.3.4AG</u>	G	<u>An authorised fund manager of a qualified investor scheme does not need to comply with the provisions of the Securities Financing Transactions Regulation referred to in COLL 8.3.4AG for:</u>	<u>From 23 September 2016 until 12 July 2017</u>	<u>23 September 2016</u>

			(1) <u>a sub-fund that was constituted before 12 January 2016 if the scheme is an umbrella; and</u>		
			(2) <u>a scheme that was constituted before 12 January 2016, if the scheme is not an umbrella.</u>		
			<u>[Note: article 33(2)(c) of the Securities Financing Transactions Regulation]</u>		

Part 2: Comes into force on 13 January 2017

4 Investor relations

...

4.5 Reports and accounts

...

~~Additional information that may need to be included in the annual and half-yearly long report of a UCITS scheme~~

- 4.5.8 A G ~~The annual and half-yearly long reports of a UCITS scheme may be required to contain additional matters not referred to in COLL 4.5.7 R and COLL 4.5.8 R, such as those required by the ESMA Guidelines on ETFs and other UCITS issues, which can be found at~~

~~<https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en-guidelines-on-etfs-and-other-ucits-issues.pdf>~~

...

Annual and half-yearly long reports for sub-funds of an umbrella

- 4.5.8A ...

Information to be included in annual and half-yearly reports on securities financing transactions and total return swaps

- 4.5.8AA G (1) The Securities Financing Transactions Regulation sets out the additional information which:

- (a) an authorised fund manager of a UCITS scheme must include in the scheme's annual and half-yearly reports; and

- (b) an authorised fund manager who is a full-scope UK AIFM of a non-UCITS retail scheme must include in the scheme's annual report.
- (2) COLL 4.5.8ABEU and COLL 4.5.8ACEU copy out the relevant provisions of that regulation.
- (3) An authorised fund manager of a UCITS scheme or a non-UCITS retail scheme that has not used securities financing transactions or total return swaps during the relevant annual accounting period or half-yearly accounting period is not required to include the information in COLL 4.5.8ACEU in its reports.

4.5.8AB EU

<u>Transparency of collective investment undertakings in periodical reports</u>	
<u>1.</u>	<u>UCITS management companies, UCITS investment companies, and AIFMs shall inform investors on the use they make of SFTs and total return swaps in the following manner:</u>
	(a) <u>for UCITS management companies or UCITS investment companies in the half-yearly and annual reports referred to in Article 68 of Directive 2009/65/EC;</u>
	(b) <u>for AIFMs in the annual report referred to in Article 22 of Directive 2011/61/EU.</u>
<u>2.</u>	<u>The information on SFTs and total return swaps shall include the data provided for in Section A of the Annex.</u>
<u>[Note: article 13(1) and 13(2) of the <i>Securities Financing Transactions Regulation</i> and article 3 for relevant definitions]</u>	

4.5.8AC EU

<u>Information to be provided in the UCITS half-yearly and annual reports and the AIF's annual report</u>	
<u>Global data:</u>	
-	<u>The amount of securities and commodities on loan as a proportion of total lendable assets defined as excluding cash and cash equivalents;</u>
-	<u>The amount of assets engaged in each type of SFTs and total return swaps expressed as an absolute amount (in the collective investment undertaking's currency) and as a proportion of the collective investment undertaking's assets under management (AUM).</u>
<u>Concentration data:</u>	
-	<u>Ten largest collateral issuers across all SFTs and total return swaps</u>

	<u>(break down of volumes of the collateral securities and commodities received per issuer's name);</u>
–	<u>Top 10 counterparties of each type of SFTs and total return swaps separately (Name of counterparty and gross volume of outstanding transactions).</u>
<u>Aggregate transaction data for each type of SFTs and total return swaps separately to be broken down according to the below categories:</u>	
–	<u>Type and quality of collateral;</u>
–	<u>Maturity tenor of the collateral broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open maturity;</u>
–	<u>Currency of the collateral;</u>
–	<u>Maturity tenor of the SFTs and total return swaps broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open transactions;</u>
–	<u>Country in which the counterparties are established;</u>
–	<u>Settlement and clearing (e.g., tri-party, Central Counterparty, bilateral).</u>
<u>Data on reuse of collateral:</u>	
–	<u>Share of collateral received that is reused, compared to the maximum amount specified in the prospectus or in the disclosure to investors;</u>
–	<u>Cash collateral reinvestment returns to the collective investment undertaking.</u>
<u>Safekeeping of collateral received by the collective investment undertaking as part of SFTs and total return swaps:</u>	
<u>Number and names of custodians and the amount of collateral assets safe-kept by each of the custodians</u>	
<u>Safekeeping of collateral granted by the collective investment undertaking as part of SFTs and total return swaps:</u>	
<u>The proportion of collateral held in segregated accounts or in pooled accounts, or in any other accounts</u>	
<u>Data on return and cost for each type of SFTs and total return swaps</u>	

broken down between the collective investment undertaking, the manager of the collective investment undertaking and third parties (e.g. agent lender) in absolute terms and as a percentage of overall returns generated by that type of SFTs and total return swaps

[Note: section A of the annex to the *Securities Financing Transactions Regulation* and article 3 for relevant definitions]

Additional information that may need to be included in the annual and half-yearly long report of a UCITS scheme

4.5.8AD G The annual and half-yearly long reports of a UCITS scheme may be required to contain additional matters not referred to in COLL 4.5.7 R and COLL 4.5.8 R, such as those required by the ESMA Guidelines on ETFs and other UCITS issues, which can be found at

https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

...

8 Qualified investor schemes

...

8.3 Investor relations

...

Contents of the annual report

...

Information to be included in annual reports on securities financing transactions and total return swaps

- 8.3.5AA G (1) The *Securities Financing Transactions Regulation* sets out the additional information which an *authorised fund manager* who is a *full-scope UK AIFM* of a *qualified investor scheme* must include in the *scheme's* annual report.
- (2) COLL 4.5.8ABEU and COLL 4.5.8ACEU copy out the relevant provisions of that regulation.
- (3) An *authorised fund manager* of a *qualified investor scheme* that has not used *securities financing transactions* or *total return swaps* during the relevant *annual accounting period* is not required to include the information in COLL 4.5.8ACEU in its reports.

Annex C

Amendments to the Investment Funds sourcebook (FUND)

In this Annex, underlining indicates new text.

Part 1: Comes into force on 23 September 2016

3 Requirements for alternative investment fund managers

...

3.2 Investor information

...

3.2.4 R ...

Additional information to be made available on securities financing transactions and total return swaps

- 3.2.4A G (1) The *Securities Financing Transactions Regulation* sets out the additional information which a *full-scope UK AIFM* must make available to investors before they invest.
- (2) COLL 4.2.5BEU and COLL 4.2.5CEU copy out the relevant provisions of that regulation.
- (3) A *full-scope UK AIFM* of an *AIF* that does not use *securities financing transactions* or *total return swaps* is not required to include the information in COLL 4.2.5CEU in its pre-contractual documents.

...

TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: date in force	Handbook provisions: coming into force
1 [FCA]	...	...	...	...	...
...					

2	...	...	...	...	...
{FCA}					
...					
4	...	...	...	...	...
{FCA}					
...					
7	<u>FUND 3.2.4AG</u>	<u>G</u>	<u>A full-scope UK AIFM does not need to comply with the provisions of the Securities Financing Transactions Regulation referred to in FUND 3.2.4AG for:</u>	<u>From 23 September 2016 until 12 July 2017</u>	<u>23 September 2016</u>
			(1) <u>any sub-fund that was constituted before 12 January 2016, if the AIF has one or more sub-funds; and</u>		
			(2) <u>an AIF that was constituted before 12 January 2016 and has no sub-funds.</u>		
			<u>[Note: article 33(2)(c) of the Securities Financing Transactions Regulation]</u>		

...

Part 2: Comes into force on 13 January 2017

3 Requirements for alternative investment fund managers

...

3.3 Annual report of an AIF

...

Timing of first annual report

...

Information to be included in annual reports on securities financing transactions and total return swaps

- 3.3.7B G (1) The *Securities Financing Transactions Regulation* sets out the additional information which a *full-scope UK AIFM* of an *AIF* must include in the *AIF*'s annual report.
- (2) *COLL 4.5.8ABEU* and *COLL 4.5.8ACEU* copy out the relevant provisions of that regulation.
- (3) A *full-scope UK AIFM* of an *AIF* that has not used *securities financing transactions* or *total return swaps* during the relevant period is not required to include the information in *COLL 4.5.8ACEU* in the *AIF*'s annual report.