

Financial Regulatory Alert

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EU New Net Short Position Disclosure Threshold at 0.1%—ESMA Confirms Disclosure of Existing Positions Required

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As previously notified, the European Commission has revised rules to permanently lower the initial net short position reporting threshold from 0.2 per cent to 0.1 per cent under the EU Short Selling Regulation (EU SSR) and this new threshold will take effect on Monday 31 January 2022 (see [here](#)).

European Securities and Markets Authority (ESMA) have now issued a statement (see [here](#)) giving guidance on reporting net short positions between 0.1 per cent and 0.2 per cent during the transition to the new initial disclosure threshold.

Holders of notifiable net short positions as at the end of Friday 28 January 2022 should report their positions as normal. In other words, a notification is only required if the relevant net short position crosses the disclosure threshold (the initial threshold being 0.2 per cent). The notification must be made by 15:30 of Monday 31 January 2022.

Holders of notifiable net short positions as at the end of Monday 31 January 2022 that are 0.1 per cent or greater must notify the relevant competent authority prior to 15:30 of Tuesday 1 February 2022. The ESMA statement makes clear that this is the case even if the position was held prior to 31 January 2022.

Accordingly, if a position holder holds a net short position of 0.19 per cent in an issuer with shares admitted to trading on an EU trading venue on Friday 28 January 2022, no notification is required in respect of that position on Monday 31 January 2022. However, if the position holder continues to hold that same position of 0.19 per cent on 31 January 2022, a notification must be made to the relevant competent authority as the same position now triggers a notification request – this effectively requires an opening position disclosure of all net short positions as at 31 January 2022 of at least 0.1 per cent that have not been previously notified.

The ESMA statement includes a table of helpful scenarios to clarify how position holders should report their net short positions during this transition period.

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Next Steps for investment managers

Investment managers should review their net short positions in respect of issuers within the scope of the EU SSR and determine whether they have any positions between 0.1 per cent and 0.2 per cent that will require disclosure once the new threshold takes effect.

In particular, investment managers should identify if they hold any such net short positions in respect of issuers whose relevant competent authority requires notification to be made through an online reporting system and where pre-registration on that system is required before a notification can be made. If not already registered, registration will need to be completed in good time to make the necessary notification within the deadline at 15:30 on 1 February 2022.

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