

ESMA and the FCA Extend the Temporary 0.1% Net Short Position Reporting Threshold

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Background

In response to the unprecedented circumstances caused by the COVID-19 pandemic, the EU and the UK temporarily lowered the reporting threshold under the EU Short Selling Regulation¹ (“EU SSR”) for net short positions in shares of companies admitted to trading on an EU/UK regulated market earlier this year.

The European Securities and Markets Authority (ESMA) lowered the reporting threshold from 0.2 per cent to 0.1 per cent in March 2020² as a precautionary measure, to permit regulators to “deal with any threats to market integrity, orderly functioning of markets and financial stability at an early stage, allowing them and ESMA to timely address such threats in case of signs of market stress.”³ The temporary lower reporting threshold has been extended twice⁴ since its introduction and the present extension applies the lower threshold until 19 March 2021.

Some national competent authorities also took additional measures in their own national markets and temporarily banned the short selling of, and the creation of net short positions relating to, certain shares admitted to trading on the relevant national trading venues.⁵

Lower reporting threshold in the EU

On 16 December, ESMA renewed its decision⁶ under the EU SSR to temporarily require the holders of net short positions⁷ in shares traded on an EU “regulated market”⁸ to notify the relevant national competent authority if the position reaches, exceeds or falls below 0.1 per cent of the issued share capital. The measure applies in the European Economic Area (EEA) until 19 March 2021.

Lower reporting threshold in the UK

The UK will amend Article 5(2) of the EU SSR as on-shored in English law by the Short Selling (Amendment) (EU Exit) Regulations⁹ (as amended, the “UK SSR”) to lower the notification threshold from 0.2 per cent to 0.1 per cent of the issued share capital of a company whose shares are admitted to trading on a UK trading venue. This change will come into force on 1 February 2021.

Contact Information

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Does the lower reporting threshold impact any other requirements under the EU SSR or the UK SSR?

The scope and other requirements under the EU SSR or UK SSR remain unchanged. The lower reporting threshold continues to apply to any natural or legal persons, regardless of their country of residence or establishment. Shares admitted to trading on a regulated market where the principal venue for the trading of those shares is located in a third country (as included in ESMA's "List of exempted shares"¹⁰), continue to be exempt from the scope of the measures.

What is the impact of Brexit on reporting of net short positions in the UK?

Market participants will need to consider the Brexit-related changes to reporting net short positions when the Brexit transition period ends, as follows:

Until 31 December 2020

Until the end of the transition period, the EU SSR continues to apply in the UK. To determine whether a position in shares should be notified to the Financial Conduct Authority (FCA), position holders should continue to check the ESMA Financial Instruments Reference Data System (FIRDS)¹¹ to determine whether the FCA is the relevant competent authority for a particular share and also the ESMA "List of exempted shares" to see if that share is exempt. If a share is not exempt, position holders should continue sending their notifications to the FCA.

After 1 January 2021

After the end of the transition period, the UK SSR will apply in the UK¹². To determine whether a position in shares should be notified to the FCA, position holders will have to consult the FCA FIRDS¹³ for a particular share and also the UK "List of exempted shares" to check whether that share is exempt. If a share is not exempt, position holders should send their notifications to the FCA. The UK List of exempted shares will be published on the FCA website from 1 January 2021.

The process of making net short position notifications to the FCA through its Electronic Submission System (ESS) will not change. Prior registration of reporting persons and position holders will continue to be required.

¹ Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps ([here](#)).

² ESMA Decision of 16 March 2020 to require natural or legal persons who have net short positions to temporarily lower the notification thresholds of net short positions in relation to the issued shares capital of companies whose shares are admitted to trading on a regulated market above a certain threshold to notify the competent authorities in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council ([here](#)).

³ ESMA renews its decision requiring net short position holders to report positions of 0.1 per cent and above, 11 June 2020, ESMA press release ([here](#)).

⁴ See [here](#) for the June 2020 extension and see [here](#) for the September 2020 extension.

⁵ Short Selling Measures, Our response to COVID-19, ESMA website ([here](#)).

⁶ ESMA Decision of 16 December 2020 renewing the temporary requirement to natural or legal persons who have net short positions to lower the notification thresholds of net short positions in relation to the issued share capital of companies whose shares are admitted to trading on a regulated market to notify the competent authorities above a certain threshold in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council ([here](#)).

⁷ A “net short position” means the position remaining after deducting any long position that a natural or legal person holds in relation to the issued share capital from any short position that that natural or legal person holds in relation to that capital shall be considered a net short position in relation to the issued share capital of the company concerned (Article 3(4), Short Selling Regulation).

⁸ A “regulated market” means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments—in the system and in accordance with its non-discretionary rules—in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of MiFID 2 (Article 4(21), MiFID 2).

⁹ Statutory Instrument 2018 No. 1321 ([here](#)).

¹⁰ Exempted Shares under the Short Selling Legal Framework, ESMA website ([here](#)).

¹¹ Financial Instruments Reference Data System, ESMA website ([here](#)).

¹² Net short positions reporting and preparing for Brexit, 18 December 2020, FCA website ([here](#)).

¹³ The FCA FIRDS is currently offline and will re-open on 2 January 2021, FCA website ([here](#)).

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