

EU Net Short Position Disclosure Threshold Lowered to 0.1%

October 5, 2021

The European Commission has revised rules to permanently lower the net short position reporting threshold from 0.2 per cent to 0.1 per cent under the EU Short Selling Regulation (“EU SSR”). The net short position notification requirements under the EU SSR apply to investment managers within and outside the EU with respect to shares of any issuer admitted to trading on an EU trading venue unless the shares are excluded ¹(“EU Issuer”).

Summary

The EU SSR requires that the net short position of a person in an EU Issuer be disclosed when it reaches reach, exceed or fall below at least 0.1 per cent of the issued share capital of an EU Issuer, and every 0.1 per cent thereafter.

The new rules will enter into force on the twentieth day following the publication of the Delegated Regulation (see [here](#)) in the Official Journal of the European Union (“Official Journal”). As of the date of this alert, the Delegated Regulation has not been published in the Official Journal.

Background

On 16 March 2020, in response to market conditions arising from the COVID-19 outbreak, the initial reporting threshold under the EU SSR was lowered temporarily from the original threshold of 0.2 per cent to 0.1 per cent. The lower reporting threshold ceased to apply after 19 March 2021, and the initial reporting threshold under EU SSR reverted to 0.2 percent.

In contrast, the United Kingdom, following the end of the Brexit transition period, permanently lowered the threshold for reporting net short positions under equivalent UK rules to 0.1 per cent, in respect of issuers whose shares are admitted to trading on a UK trading venue (unless excluded)² from 1 February 2021.

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Permanent reduction of the initial reporting threshold under EU SSR

Unlike the temporary lower threshold, the Delegated Regulation seeks to permanently amend the EU SSR so that the 0.1 per cent reporting threshold will apply to net short positions in respect of an EU Issuer.

Other than the lowering of the initial reporting threshold, the EU SSR would otherwise continue to apply as before. However, please do note that ESMA is currently consulting on wider changes to EU SSR which may impact other aspects of the EU SSR (see below).

ESMA consultation on the review of EU SSR

On 24 September 2021, ESMA issued a consultation paper reviewing various provisions of the EU SSR (see [here](#)).

ESMA is consulting on suggestions for “operational improvements” and “policy clarifications” on the following three key areas, concerning the:

- Calculation of net short positions, the prohibition of uncovered short selling, and the locate rule under which short selling trades can take place.
- Mechanism for transparency of net short positions and the proposal to publish aggregated net short positions per issuer based on all individual positions, and the scope of the exemptions for shares that are more heavily traded in a third country.
- Introduction of a centralised notification and publication system to reduce reporting burden, increase cost efficiency and foster ESMA’s monitoring capacity and coordination powers in case of potential threats at EU level.

Next steps for investment managers

Affected investment managers should prepare to update operational and compliance frameworks to reflect the new, lower reporting threshold in due course.

Akin Gump will continue to monitor developments in this space.

¹ The European Securities and Markets Authority (ESMA) maintains a list of exempted shares. The Delegated Regulation that will amend the EU SSR is marked with “EEA Relevance” meaning, once adopted under the European Economic Area (EEA) agreement, the new threshold also applies with respect to shares of issuers admitted to trading on a trading venue in Iceland, Liechtenstein and Norway.

² The UK Financial Conduct Authority (FCA) maintains a list of exempted shares.

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