

Financial Regulatory Alert

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EU Short Selling Regulation: ESMA to End Temporary Lower 0.1% Net Short Position Reporting Threshold

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The European Securities and Markets Authority (ESMA) has announced that the temporary lower net short position reporting threshold of 0.1 percent under the EU Short Selling Regulation (SSR) with respect to shares traded on an EU regulated market¹ will end today, 19 March 2021.² Similarly, the European Free Trade Association (EFTA) Surveillance Authority has also decided to end the 0.1 percent lower reporting threshold in Iceland, Liechtenstein and Norway (the EEA EFTA States) from the same date.³ The temporary lower reporting threshold of 0.1 percent has applied in the European Economic Area (EEA) from 16 March 2020.

From 20 March 2021, the reporting threshold in the EEA will revert from the temporary, lower threshold of 0.1 percent back to 0.2 percent specified under the EU SSR. Holders of net short positions in shares traded on an EEA regulated market will now only be required to notify the relevant EEA national competent authority (NCA) under the EU SSR if the net short position reaches, exceeds or falls below 0.2 percent of the issued share capital. The 0.2 percent net short position threshold will once again apply equally to shares traded on an EU-regulated market and an EU-multilateral trading facility (MTF).

In our previous alerts on the topic, we discussed how the EU and the UK regulators both lowered the reporting threshold under the EU SSR and the UK SSR in response to the unprecedented circumstances caused by the COVID-19 pandemic.⁴

Position in the UK

It is currently unclear whether the Treasury will further amend the Short Selling (Notification Thresholds) Regulations 2021 No. 5 to amend the notification threshold under Article 5(2) of the UK Short Selling Regulation (UK SSR) back to 0.2 percent from 0.1 percent, the threshold which has been in force from 1 February 2021. Market participants must continue to report to the FCA under the UK SSR in accordance with the lower reporting threshold of 0.1 percent.

Contact Information

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Position in the EEA

ESMA has decided not to extend the temporary lower reporting threshold on the basis of “forecasts showing moderate optimism for recovery, volatility decreasing and the main EU stock indices close to pre-pandemic levels, the current situation in financial markets no longer resembles the emergency situation required by the Short Selling Regulation to maintain the measure.”

The last reporting where the lower net short position threshold of 0.1 percent applies will be in relation to Friday, 19 March 2021, and must be reported to the relevant NCAs by 15:30⁵ on Monday, 22 March 2021.

ESMA stated that, together with the NCAs, it will continue to monitor developments in financial markets as a result of the COVID-19 pandemic.

¹ ESMA and the FCA Extend the Temporary 0.1% Net Short Position Reporting Threshold, Akin Gump Financial Regulatory Alert, December 22, 2020 (See [here](#)).

² ESMA to allow decision on reporting of net short position of 0.1 percent and above to expire (See [here](#)).

³ Temporary requirement for net short position holders to disclose positions of 0.1% and above expires on 19 March (See [here](#)).

⁴ ESMA and the FCA Extend the Temporary 0.1% Net Short Position Reporting Threshold, Akin Gump Financial Regulatory Alert, December 22, 2020 (See [here](#)); ESMA Renews 0.1% Net Short Reporting Threshold for a Further Three Months, Akin Gump Financial Regulatory Alert, June 11, 2020 (See [here](#)); and Termination of EU Short Selling Bans but 0.1% Net Short Reporting Continues, Akin Gump Financial Regulatory Alert, May 18, 2020 (See [here](#)).

⁵ The time must be calculated according to the time in the Member State of the relevant competent authority to whom the relevant position must be notified.

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