

Alert

FCA Announces Change to the Method for Short Selling Reporting

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The UK Financial Conduct Authority (“FCA”) has opened a new portal for reporting net short positions, the Electronic Submission System (“ESS”), with immediate effect. Position holders should note that the FCA no longer accepts notifications by email and should apply to create a new user account with ESS without delay.

When Should a Net Short Position Be Reported?

There has been no change with respect to the reporting obligations and the deadline for submission of the notifications under the EU Short Selling Regulation (Regulation 236/2012) (“SSR”). Net short positions in UK-listed shares or UK sovereign debt should be notified to the FCA by 3:30 pm UK time on a T+1 basis. The position should be calculated at midnight on the trading day the position was reached.

Under the SSR, the requirement to make a private disclosure (to the regulator), in respect of equity positions, applies when a net short position reaches 0.2% of the issued share capital of the company, for each 0.1% increase or decrease thereafter; a final notification must be submitted when the position falls below 0.2%. The public disclosure requirements start at 0.5%. The reporting obligations apply with respect to any shares admitted to trading on a UK or EU trading venue, except shares on the [Exempted Shares List](#) maintained by the European Securities and Markets Authority (“ESMA”). The reporting thresholds for sovereign debt are available on [ESMA’s website](#).

What Has Changed?

Previously, the FCA required completed notification forms for public or private disclosures to be provided by email. From now, position holders are required to make notifications through the ESS. In order to do so, the following steps must be followed:

1. The position holder (the firm) should first register using the [ESS Login Page](#) to create a firm ESS account. Detailed instructions can be found in the newly published [ESS User Guide](#).
2. Once a position holder’s ESS account has been created and approved by the FCA, each individual who will be making the notification will need to register to make SSR notifications separately, as a reporting person.

The following documents will be required for each person:

- Authorisation letter on company letterhead stating that the relevant individual(s) are authorised to submit notifications on behalf of the firm; and
- Certificate of incorporation of the position holder firm (e.g., the investment manager).

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or the author.

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