



ALERT

# UK Short Selling Update: UK Reporting Threshold Goes up to 0.2 Percent From Feb. 5, 2024; Other Changes to the Short Selling Regime Anticipated

December 14, 2023



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## 0.2 Percent Initial Reporting Threshold for UK Shares

The Short Selling (Notification Threshold) Regulations 2023<sup>i</sup> adopted as part of the post-Brexit review of the UK financial services regulatory framework will increase the initial threshold for reporting of net short positions to the UK's Financial Conduct Authority ("FCA") from 0.1 percent to 0.2 percent.

The disclosure obligations apply to all holders of net short positions in companies whose shares are admitted to trading on UK trading venues. These obligations capture positions held in shares directly, on swap, or through any other financial instruments, including depository receipts, baskets and any derivatives referencing the UK-listed shares.

Position holders are currently reporting their net short positions to the FCA starting at 0.1 percent. This lower threshold (which replaced the original 0.2 percent threshold) was first introduced under the European Union's Covid-19 emergency measures, but later became permanent. This has led to a significant increase in the number of reports submitted to the FCA in recent years and has created a burdensome regime for market participants with minimal additional data analysis benefit to the FCA.

The new UK initial reporting threshold of 0.2 percent will apply from Feb. 5, 2024. From that date, position holders with net short positions below 0.2 percent will no longer be required to disclose their positions. The incremental reporting threshold of 0.1 percent for any net short positions above 0.2 percent will continue to apply.

Under the EU Short Selling Regulation<sup>ii</sup>, the initial threshold of 0.1 percent continues to apply to net short positions in the share capital of issuers with shares admitted to trading in EU member states.

## Other Anticipated Reforms

The UK HM Treasury has recently published the draft Short Selling Regulations 2024<sup>iii</sup> ("Draft 2024 Regulations") and its response to the consultation on further amendments to the UK short selling regime ("Consultation Response").<sup>iv</sup> The following key reforms of the UK short selling regime are expected in the near term:

- *Aggregated publication of net short positions:* At present, the FCA publishes the names of position holders with net short positions of 0.5 percent or more. Under the Draft 2024 Regulations, the FCA will instead publish the aggregate net short positions for each issuer (expressed as a percentage of the company's share capital) based on the notifications it receives in respect of each business day. Individual positions and the names of position holders will no longer be disclosed publicly.
- *New powers granted to the FCA:* The Draft 2024 Regulations are expected to grant the FCA rulemaking, supervisory and enforcement powers regarding short selling. As a result, the FCA will have more flexibility to make future modifications to the UK short selling regime without the need to involve the legislative process. Among other things, the FCA will have powers to make rules to



exempt shares from the scope of the short selling reporting obligations. The expectation is that the FCA will, in the future, publish a “positive” list of all in-scope shares, rather than continuing with the present practice of a “negative” list of exempted shares.

- *Net short positions in UK sovereign debt and CDS*: The Consultation Response confirms the UK Government’s plans to remove the current obligations on short sellers to obtain “cover” for short positions in UK sovereign debt and report net short positions of 0.5 percent or more of UK debt to the FCA. Even more significantly, the Government intends to repeal the current restrictions on buying “uncovered” sovereign CDS. Sovereign debt and sovereign credit default swaps will remain in scope of the FCA’s emergency intervention powers for short selling.

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

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<sup>i</sup> [2023. No. 1258 The Short Selling \(Notification Threshold\) Regulations 2023.](#)

<sup>ii</sup> [Regulation \(EU\) No 236/2012](#)

<sup>iii</sup> [HM Treasury, The Short Selling Regulations 2024.](#)

<sup>iv</sup> [HM Treasury, Short Selling Regulation Consultation – Sovereign Debt and Credit Default Swaps, 11 July 2023;](#) and [HM Treasury, Government Response to Short Selling Regulation: Consultation – Sovereign Debt and Credit Default Swaps.](#)