

SchulteRoth&Zabel

Memorandum

Update: EU Short-Selling Regulation¹ — Short-Sale Bans

20 April 2020

The chart below provides a brief summary of EU short-sale restrictions and guidelines fund managers should use to assess compliance in relevant markets at the time of certain transactions.

	Austria	Belgium	France	Greece	Italy	Spain
Expiry Date²	18 May 2020	18 May 2020	18 May 2020	18 May 2020	18 June 2020	18 May 2020
Restricted Activities³	Establishing of new net short positions or increasing of existing net short positions.	Entering into or increasing a net short position.	Creating or increasing a net short position.	Entering into short sales and transactions other than short sales which create, or increase, a net short positions in shares.	Taking net short positions or increasing existing net short positions.	Creating or increasing net short positions.

¹ The Commission [Regulation](#) 236/2012 of 14 March 2012 on short selling and certain aspects of credit default swaps ("**Regulation**"). The Regulation applies to (i) shares admitted to trading on an EU trading venue; (ii) EU sovereign debt; and (iii) EU sovereign debt credit default swaps.

² The bans may be extended if the adverse market conditions persist.

³ See Appendix for the rules applicable to the calculation and reporting of net short positions.

	Austria	Belgium	France	Greece	Italy	Spain
Which Shares Are Covered?	Applies to shares admitted to trading on the Vienna Stock Exchange (“Wiener Börse”) for which the Financial Markets Authority (“FMA”) is the Relevant Competent Authority. ⁴	Applies to shares admitted to trading on Euronext Brussels and Euronext Growth where the Financial Services and Markets Authority (“FSMA”) is the Relevant Competent Authority.	Applies to shares admitted to trading on French trading venues and for whom the Autorité des marchés financiers (“AMF”) is the Relevant Competent Authority. A preliminary (but not comprehensive) list of the identified issuers is available here .	Applies to shares admitted to trading on the Athens Stock Exchange for which the Hellenic Capital Market Commission (“HCMC”) is the relevant competent authority.	Applies to a list of shares attached to the notice, available here .	Applies to shares admitted to trading on Spanish trading venues (“Stock Exchanges and Mercado Alternativo Bursátil”) for which Comisión Nacional Del Mercado De Valores (“CNMV”) is the relevant competent authority.
Are Indices and Baskets Covered?	Yes, if the aggregate weighting of the restricted securities represents 50% or more of the index/basket.	Yes, if the aggregate weighting of the restricted securities represents more than 50% of the index/basket.	Yes, if the aggregate weighting of the restricted securities represents more than 50% of index/basket. Strategies aimed at increasing a net short	Yes, if the aggregate weighting of the restricted securities represents more than 50% of the index/basket.	Net-short positions held through indices are covered if the restricted securities represent more than 20% of the index/basket.	Yes, if the aggregate weighting of the restricted securities represents more than 50%

⁴ As defined in Article 2 of the [Regulation](#). In summary, the Relevant Competent Authority is the EU regulator for the market where the share was first admitted to trading. See [ESMA FIRDS](#) and [ESMA Exempted Shares List](#) databases.

	Austria	Belgium	France	Greece	Italy	Spain
			position by combining index derivative transactions and other positions are prohibited.	Strategies aimed at increasing a net short position by combining index derivative transactions and other positions are prohibited.	Strategies aimed at increasing a net short position by combining index derivative transactions and other positions are prohibited.	of their composition. Short-selling through index futures, options or other index derivatives does not benefit from the >50% exemption unless such futures/other derivatives are exchange-traded.
Are Derivatives Covered? ⁵	Covered. Roll-over of pre-existing short positions on expiry is permissible, provided that the net short position is not increased.	Covered	Covered. Roll-over of pre-existing short positions on expiry is permissible, provided that the net short position is not increased.	Covered. Roll-over of pre-existing short positions on expiry is permissible, provided that the net short position is not increased.	Covered. Roll-over of pre-existing short positions on expiry is permissible, provided that the net short position is not increased.	Covered. Roll-over of pre-existing short positions on expiry is permissible, provided that the net short position is not increased.

⁵ See Appendix for the method for calculating a net short position.

	Austria	Belgium	France	Greece	Italy	Spain
Are Depositary Receipts (Including ADRs and GDRs) and Dually-Listed Shares Covered?⁶	Covered	Covered	Covered	Covered	Covered	Covered
Can I Include Long Positions in Convertible Bonds and Subscription Rights in the Calculation?⁷	Yes	Yes	Yes	Not specified	Yes	Yes
Links to Announcement and Guidance	FMA Announcement & FAQs	FSMA Announcement	AMF Announcement and FAQs	HCMC Announcement & FAQs	Consob Materials ESMA Opinion	CNMV Announcement & FAQs
Exemptions	Market making activities. ⁸	Market making activities.	Market making activities.	Market making activities.	Market making activities.	Market making activities.

⁶ Shares with multiple listings are covered unless the share appears on the [ESMA Exempted Shares List](#).

⁷ See Appendix for the usual net short position calculation method specified in the Regulation where the position of convertible bonds and subscription rights is not specified in the ban.

⁸ This exemption is available only to eligible EU investment firms that conduct market making in the relevant securities, as notified to local competent authorities. This exemption is not available to investment funds.

Appendix

Calculating a 'Net Short Position' in Shares

A net short position in shares is calculated by deducting any long **positions held in relation to the issued share capital** of the issuer from the short positions held in respect of the share capital of the same issuer. The calculation should be made based on the position at midnight⁹ at the end of the trading day.

The calculation must include all transactions which have the effect of conferring a financial advantage in the event of an increase/decrease in the price or value of the share in addition to cash long and short positions. The types of financial instruments through which a long or short position can be held include options, covered warrants, futures, index-related instruments, contracts for differences, shares/units of ETFs, swaps, spread bets, complex derivatives, certificates linked to shares and depository receipts.

Net short positions held via derivatives are calculated on a delta-adjusted basis.¹⁰ Indirect positions held through a basket, an index or an ETF (or similar) are calculated on a look-through basis taking into account the weight of that share within the basket/index.¹¹

Financial instruments that give rise to a claim to unissued shares, subscription rights, convertible bonds and other comparable instruments are not included in the calculation.¹² CDS positions referenced to the credit-worthiness of an EU issuer should not be included in the calculation.

Reporting of Net Short Positions in Shares

The disclosure requirements apply to any shares admitted to trading on an EU (including for these purposes UK) trading venue, except shares included on the [ESMA Exempted Shares List](#) (i.e., shares for which the principal trading venue is outside the EU). The reporting requirements apply irrespective of the temporary bans.

Firms must report their net short positions at 3:30 pm GMT on a T+1-basis to the regulator for the relevant market. Ordinarily, 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

⁹ The bans in Austria, France, Greece, Italy and Spain prohibit intra-day increases of net short positions.

¹⁰ Commission [Delegated Regulation](#) 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events.

¹¹ Firms are required to look through indices, baskets and ETFs having regard to publicly available information (i.e., information which is easy to access on the market operator's or issuer's website and which is obtainable free of charge) (see Article 3(3) of the [Delegated Regulation](#)).

¹² The bans in France, Italy and Spain provide that convertible bonds and subscription rights should be included in the calculation of a net short position for the purposes of the ban.

company and 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%. **ESMA has temporarily reduced the initial reporting threshold from 0.2% down to 0.1% of the issued share capital of an issuer.**

Fund managers are required to calculate net short positions first at the level of each fund/account. Net short positions in all funds and portfolios under management that pursue the same investment strategy must then be aggregated and reported at the level of the manager. For these purposes, the “same investment strategy” means a strategy to be long or short in relation to a particular issuer.

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

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This is a fast-moving topic and the information contained in this *Memorandum* is current as of the date it was published.

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