

ALERTS

EU Shorting Threshold Lowered to 0.1% from 31 January 2022

January 12, 2022

From 31 January 2022 (“Implementation Date”), the initial threshold for notification of significant net short positions in EU-traded stocks will be lowered from 0.2% to 0.1% of a company’s issued share capital. Asset managers with net short positions will need to adjust their procedures and systems to comply with the new requirements.

The Implementation Date follows the publication of a *Delegated Regulation*^[1] in the European Union’s Official Journal on 11 January 2022 amending *the Short Selling Regulation*^[2].

Any holder of a net short position (whether established before, on or after the Implementation Date) in a company admitted to trading on an EU “trading venue”^[3] must notify the relevant competent authority^[4] if the net short position amounts to 0.1% or more of a company’s issued share capital. This brings the EU’s initial reporting threshold in line with the current UK threshold, which already stands at 0.1%.

The Delegated Regulation does not alter any other requirements of the *Short Selling Regulation*; incremental notification thresholds remain the same. These will be triggered for each 0.1% above or below the initial threshold. For asset managers with positions across different funds and portfolios, net short positions must be calculated for each account and then aggregated where the same investment strategy (i.e., being short or long) is pursued in relation to a particular issuer^[5] across more than one account.

Background to the Lower Threshold

The transition to a permanent lower threshold follows the prior instances of European Securities and Markets Authority's ("ESMA") temporarily lowering the reporting threshold at the start of COVID-19 pandemic to address market volatility and increase transparency.

The threshold was initially lowered to 0.1% from 16 March 2020 and renewed three times until 19 March 2021 on the basis of emergency powers^[6]. Since 20 March 2021, the threshold has reverted to 0.2%.

ESMA's analysis of the reporting received during this time lead to a request to the EU Commission to issue permanent rules, because its monitoring highlighted a large number of net short positions between 0.1% and 0.2%. The regulator hopes that greater transparency of net short positions will improve the capacity of ESMA and national competent authorities to act quickly in case more stringent action is needed in the future to control turbulent market conditions.

Authored by Anna Maleva-Otto and David Soerensen.

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

[1] Commission Delegated Regulation (EU) 2022/27 of 27 September 2021 amending Regulation (EU) No 236/2012 of the European Parliament and of the Council as regards the adjustment of the relevant threshold for the notification of significant net short positions in shares.

[2] Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps ("Short Selling Regulation")

[3] See FIRDS database maintained by ESMA. See also List of exempted shares for dually-listed shares whose principal market is outside the EU.

[4] The "relevant competent authority" means the authority of the most relevant market in terms of liquidity for the financial instrument in question or the authority of the Member State in which the financial was first admitted to trading on a trading venue, see the Short Selling Regulation Article 2(1)(j)(v) and (vi).

[5] Article 12(3) in Regulation (EU) No 918/2012.

[6] “ESMA to Allow Decision on Reporting of Net Short Position of 0.1% and Above to Expire,” *ESMA*, 15 March 2021, available here.

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