

Short Selling Regulation

Chapter 1

Commission Delegated Regulation (EU) No 826/2012

Preamble

THE EUROPEAN COMMISSION,
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Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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, and in particular Articles 9(5), 11(3) and 16(3) thereof,

After consulting the European Data Protection Supervisor,

01/01/2021

Whereas:

(1) This Regulation aims to establish a uniform regime for the submission of notifications and information by investors to national competent authorities or by those competent authorities to the European Securities and Markets Authority (hereinafter "ESMA"). Since the turnover calculation to determine exempted shares is also closely linked to the giving of information concerning shares where their principal trading venue is in the Union, it should also be covered by this Regulation. To ensure coherence between such provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations it is desirable to include all the regulatory technical standards required by Regulation (EU) No 236/2012 in a single Regulation.

(2) In relation to the notifications of net short positions on shares, sovereign debt and uncovered sovereign credit default swaps and to the public disclosure of significant net short positions on shares, uniform rules regarding the details of the information including the common standard to be used in the notification should be specified to ensure consistency in the application of the notification requirements across the Union, to foster efficiency in the reporting process and to provide comparable information to the public.

(3) To ensure the proper identification of the position holders, notification should, where available, include a code that can complement the name of the position holder. Until a single, robust and publicly recognised global legal entity identifier is available, it is necessary to rely on existing codes that some position holders may have, such as the Bank Identifier Code.

(4) For the purpose of carrying out its duties under this Regulation and under Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), ESMA is to be provided with information by competent authorities on a quarterly basis in relation to notification of net short positions on shares, sovereign debt and uncovered sovereign credit default swaps, as well as with additional information on net short positions upon its request.

(5) In order to efficiently use such information, in particular with respect to the objective of ensuring the orderly functioning and integrity of the financial markets and the stability of the financial system in the Union, the quarterly information should be standardised, stable over time and of sufficient granularity, in the form of some daily aggregated data, to allow ESMA to process it and to conduct research and analyses.

(6) ESMA is not in a position to determine beforehand the specific information it may require from a competent authority, as that information may only be determined on a case-by-case basis and may include input as diverse as individual or aggregated data on the net short positions or uncovered positions in credit default swaps. Nonetheless, it is important to establish the general information to be provided in this respect.

(7) For the purposes of calculating turnover, both in the Union and in trading venues outside the Union, to determine the principal trading venue of a share, each relevant competent authority needs to determine the relevant sources of information to identify and measure the trading on a specific share. There are currently neither harmonised transaction reporting requirements in the Union for shares admitted only on multilateral trading facilities nor international standards with regard to trading statistics on individual shares on trading venues, which may show relevant variations. Thus, it is necessary to allow some flexibility to competent authorities to carry out that calculation.

(8) In order to ensure consistency, the date of application of this Regulation should be the same as that of Regulation (EU) No 236/2012. However, in order to allow sufficient time for natural and legal persons to process the list of shares exempted pursuant to Article 16 of Regulation (EU) No 236/2012, the preparation of that list and its subsequent publication on the ESMA website should take place sufficiently in advance before the application date of Regulation (EU) No 236/2012. Therefore, the method set out for turnover calculation to determine the principal venue for the trading of a share should apply from the date of entry into force of this Regulation.

(9) Since Regulation (EU) No 236/2012 recognised that binding technical standards should be adopted before that Regulation can be usefully applied, and as it is essential to specify before 1 November 2012 the required non-essential elements to facilitate compliance by market participants with that Regulation and enforcement by competent authorities, it is necessary that this Regulation should enter into force on the day following that of its publication.

(10) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.

(11) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010,

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HAS ADOPTED THIS REGULATION: