

16 March 2020

## Circular on Regulation (EU) No 236/2012 on Short-Selling - ESMA requires net short position holders to report positions of 0.1% and above, in reaction to COVID-19 pandemic

The European Securities and Markets Authority (ESMA) has today, issued a [decision](#) to temporarily require the holders of net short positions in shares traded on a regulated market within the European Union (EU), to notify the relevant national competent authority ('NCA'), if the respective position reaches or exceeds 0.1% of the issued share capital, after the entry into force of the decision.

The decision has entered into force immediately, **following publication on ESMA's website**. Therefore, net short position holders are required to notify NCAs of their relevant positions as at the close of the trading session on Monday 16 March 2020.

ESMA considers that lowering the reporting threshold is a precautionary action that, under the exceptional circumstances linked to the ongoing COVID-19 pandemic, is essential for authorities to monitor developments in financial markets. The measure can support stricter action if required, to ensure the orderly functioning of EU markets, financial stability and investor protection.

ESMA considers that the current circumstances constitute a serious threat to market confidence in the EU, and that the proposed measure is appropriate and proportionate to address the current threat level to EU financial markets.

The temporary transparency obligations apply to any natural or legal person, irrespective of their country of residence. They do not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country, market making or stabilisation activities.

ESMA Decision to require natural or legal persons who have net short positions to temporarily lower the notification thresholds of net short positions in relation to the issued shares capital of companies whose shares are admitted to trading on a regulated market above a certain threshold to notify the competent authorities, in accordance with point (a) of Article 28(1) of Regulation (EU) No 236/2012 of the European Parliament and of the Council

Article 28(1)(a) of the Short-Selling Regulation grants ESMA the power to require natural or legal persons who have net short positions in relation to a specific financial instrument or class of financial instruments to notify a competent authority or to disclose to the public details of any such position

However, ESMA may only take a decision under Article 28(1) of the Regulation if:

- (a) The measures listed in Article 28(1)(a) address a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union and there are cross-border implications; and

- (b) No competent authority has taken measures to address the threat or one or more of the competent authorities have taken measures that do not adequately address the threat.

#### Threat to the orderly functioning and integrity of the financial markets

Recent developments relating to COVID-19 have had considerable adverse effects on the real economy and EU financial markets. Furthermore, ESMA considers the current situation to be of serious threat to the orderly functioning and integrity of such financial markets. As things are, there is a clear risk that the downward trend which EU stock markets are facing will continue in the coming days and weeks.

Such severe price falls undermine the price-formation mechanism, threatening the integrity and orderly functioning of the markets. In turn, such losses are also likely to dampen market confidence, threatening the orderly functioning and integrity of the markets further. In the current context, short sales may contribute to the acceleration of price volatility, exacerbating market losses.

By lowering the net short position notification threshold, national competent authorities and ESMA would be better able to assess the situation adequately and react if the integrity, orderly functioning and stability of the markets require more stringent actions.

#### Threat to the stability of the whole or part of the financial system in the Union

Financial stability is a condition in which the financial system is capable of withstanding shock and the unravelling of financial imbalances. Unusual levels of volatility in the prices of shares and selling pressures are already present in European market. In such circumstances, market participants may take new short positions in order to profit from additional price falls, which may in turn worsen the price falls seen in past weeks.

ESMA believes that the decrease in the reporting threshold is an essential, preliminary action which will allow national competent authorities to monitor markets more closely. This measure may act as a stepping-stone to eventually implement further, regulatory responses, if necessary.

#### Cross-border implications

The threats to market integrity, orderly functioning and financial stability are relevant to the entire Union. In view of the fact that the financial markets of each EU member State are affected by these threats, the cross-border implications are especially serious.

For more information, kindly refer to the decision taken by ESMA, a copy of which can be accessed through this [Link](#).

Any queries in relation to the above, or in relation to the Short-Selling Regulation in general, should be directed to the MFSA via email on [ssr@mfsa.mt](mailto:ssr@mfsa.mt)