MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

06 April 2022

Circular on Regulation (EU) No 236/2012 on Short-Selling - ESMA Publishes its final report on the review of the Short Selling Regulation

1.0 Background Information

The Short Selling Regulation ('SSR') entered into force in November 2012 with the aim of creating a common regulatory framework regarding the requirements and powers with respect to short selling. The need to establish such common regulatory framework emerged in the aftermath of the financial crisis, where EU Member States adopted highly diversified measures to restrict or ban short selling, as such practice could aggravate the downward spiral of share prices and lead to systemic risks.

The SSR was therefore introduced with the following objectives:

(i) Ensuring direct and uniform application throughout the EU of obligations on private parties to notify and disclose Net Short Positions ('NSPs');

(ii) Fostering greater coordination and consistency between Member States when taking measures in exceptional circumstances; and

(iii) Prohibiting uncovered short sales.

In January 2017, the European Securities and Markets Authority ('ESMA') was mandated by the European Commission to deliver Technical Advice on some aspects of the SSR, which Technical Advice was in turn delivered in December 2017. The Technical Advice at the time focused on three main elements of the SSR, namely – the exemption for market making activities, the procedure for imposing short-term restrictions on short selling, and the method of notification and disclosure of NSPs. Nevertheless, to date, no legislative review has been launched as a result of the 2017 Technical Advice.

2.0 A Supplemental Review of the SSR

The Authority would like to notify all market participants that following the Consultation Paper published in September 2021, which undertook a further review of the SSR provisions following the COVID-19 crisis, ESMA has, on 04 April 2022, published its Final Report on the review of the SSR. The Final Report proposes targeted amendments to improve its operation, focused on clarifying the procedures for the issuance of short and long-term bans, ESMA's intervention powers, the prohibition of naked short selling and the calculation of NSPs and their publication.

In its Final Report, ESMA takes stock of the experience gathered in the aftermath of the COVID-19 outbreak. In light of the episodes of high volatility which took place in the US markets and elsewhere in respect of the so-called *meme stocks*[1], ESMA has also considered the possibility of similar phenomena developing in EU markets and re-assessed the SSR provisions relating to uncovered short selling.

The Final Report focuses on three main areas:

- An empirical analysis of the impacts of the emergency measures adopted during the COVID-19 crisis.

- A review of the current framework for the calculation of NSPs, the list of exempted shares and the so called *locate rule* to be met when short selling.

- An assessment of the framework for transparency and publication of NSPs, also considering the recent market events.

Contact

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.

[1] The term "meme stocks" refers to the shares of a company, (such as GameStop and AMC), which gather a lot of attention through social media platforms. Through the building of 'hype' around a particular share through narratives and conversations, meme stock communities can greatly influence the price of those shares through coordinated efforts. This leads to high trading volumes and extreme volatility in the prices of such stocks. It could also lead to short squeezes in heavily shorted names. Ultimately, meme stocks can become apparently overvalued in comparison to their fundamentals for a long period of time as members of the meme stock community maintain the stock at the increased price.