

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 (Text with EEA relevance)

CHAPTER II

TRANSPARENCY OF NET SHORT POSITIONS

Article 5

Notification to competent authorities of significant net short positions in shares

1 A natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue shall notify the relevant competent authority, in accordance with Article 9, where the position reaches or falls below a relevant notification threshold referred to in paragraph 2 of this Article.

2 A relevant notification threshold is a percentage that equals 0,2 % of the issued share capital of the company concerned and each 0,1 % above that.

3 The European Supervisory Authority (European Securities and Markets Authority) (ESMA) may issue an opinion to the Commission on adjusting the thresholds referred to in paragraph 2, taking into account the developments in financial markets.

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 42 modifying the thresholds referred to in paragraph 2 of this Article, taking into account the developments in financial markets.

Article 6

Public disclosure of significant net short positions in shares

1 A natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue shall disclose details of that position to the public, in accordance with Article 9, where the position reaches or falls below a relevant publication threshold referred to in paragraph 2 of this Article.

2 A relevant publication threshold is a percentage that equals 0,5 % of the issued share capital of the company concerned and each 0,1 % above that.

3 ESMA may issue an opinion to the Commission on adjusting the thresholds referred to in paragraph 2, taking into account the developments in financial markets.

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 42 modifying the thresholds referred to in paragraph 2 of this Article, taking into account the developments in financial markets.

5 This Article is without prejudice to laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and

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of the Council of 21 April 2004 on takeover bids⁽¹⁾ that require disclosure of short positions beyond the requirements of this Article.

Article 7

Notification to competent authorities of significant net short positions in sovereign debt

1 A natural or legal person who has a net short position relating to issued sovereign debt shall notify the relevant competent authority, in accordance with Article 9, where such a position reaches or falls below the relevant notification thresholds for the sovereign issuer concerned.

2 The relevant notification thresholds shall consist of an initial amount and then additional incremental levels in relation to each sovereign issuer, as specified in the measures taken by the Commission in accordance with paragraph 3. ESMA shall publish on its website the notification thresholds for each Member State.

3 The Commission shall be empowered to adopt delegated acts in accordance with Article 42 specifying the amounts and incremental levels referred to in paragraph 2 of this Article.

The Commission shall:

- a ensure that the thresholds are not set at such a level as to require notification of positions which are of minimal value;
- b take into account the total amount of outstanding issued sovereign debt for each sovereign issuer, and the average size of positions held by market participants relating to the sovereign debt of that sovereign issuer; and
- c take into account the liquidity of each sovereign bond market.

Article 8

Notification to competent authorities of uncovered positions in sovereign credit default swaps

Where a competent authority suspends restrictions in accordance with Article 14(2), a natural or legal person who has an uncovered position in a sovereign credit default swap shall notify the relevant competent authority where such a position reaches or falls below the relevant notification thresholds for the sovereign issuer, as specified in accordance with Article 7.

Article 9

Method of notification and disclosure

1 Any notification or disclosure under Article 5, 6, 7 or 8 shall set out details of the identity of the natural or legal person who holds the relevant position, the size of the relevant position, the issuer in relation to which the relevant position is held and the date on which the relevant position was created, changed or ceased to be held.

For the purposes of Articles 5, 6, 7 and 8, natural and legal persons that hold significant net short positions shall keep, for a period of 5 years, records of the gross positions which make a significant net short position.

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2 The relevant time for calculation of a net short position shall be at midnight at the end of the trading day on which the natural or legal person holds the relevant position. That time shall apply to all transactions irrespective of the means of trading used, including transactions executed through manual or automated trading, and irrespective of whether the transactions have taken place during normal trading hours. The notification or disclosure shall be made not later than at 15.30 on the following trading day. The times specified in this paragraph shall be calculated according to the time in the Member State of the relevant competent authority to whom the relevant position must be notified.

3 The notification of information to a relevant competent authority shall ensure the confidentiality of the information and incorporate mechanisms for authenticating the source of the notification.

4 The public disclosure of information set out in Article 6 shall be made in a manner ensuring fast access to information on a non-discriminatory basis. That information shall be posted on a central website operated or supervised by the relevant competent authority. The competent authorities shall communicate the address of that website to ESMA, which, in turn, shall put a link to all such central websites on its own website.

5 In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the information to be provided for the purposes of paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 31 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6 In order to ensure uniform conditions of application of paragraph 4, ESMA shall develop draft implementing technical standards specifying the means by which information may be disclosed to the public.

ESMA shall submit those draft implementing technical standards to the Commission by 31 March 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 10

Application of notification and disclosure requirements

The notification and disclosure requirements under Articles 5, 6, 7 and 8 apply to natural or legal persons domiciled or established within the Union or in a third country.

Article 11

Information to be provided to ESMA

1 The competent authorities shall provide information in summary form to ESMA on a quarterly basis on net short positions relating to issued share capital and to issued sovereign

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debt, and on uncovered positions relating to sovereign credit default swaps, for which it is the relevant competent authority and receives notifications under Articles 5, 7 and 8.

2 ESMA may request at any time, in order to carry out its duties under this Regulation, additional information from a relevant competent authority on net short positions relating to issued share capital and to issued sovereign debt, or on uncovered positions relating to sovereign credit default swaps.

The competent authority shall provide the requested information to ESMA at the latest within 7 calendar days. Where there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the Member State concerned or in another Member State, the competent authority shall provide ESMA with any available information based on the notification requirements under Articles 5, 7 and 8 within 24 hours.

3 In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the information to be provided in accordance with paragraphs 1 and 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 31 March 2012.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4 In order to ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical standards defining the format of information to be provided in accordance with paragraphs 1 and 2.

ESMA shall submit those draft implementing technical standards to the Commission by 31 March 2012.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

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(1) [OJ L 142, 30.4.2004, p. 12.](#)

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