

CLIENT ALERT

EU short selling measures in response to COVID-19

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The European Securities and Markets Authority (“**ESMA**”) issued a decision yesterday, Monday 16 March 2020, lowering the relevant threshold for reporting of net short positions in shares traded on a European Union (“**EU**”) regulated market. ESMA temporarily requires holders of net short positions in such shares to notify the relevant national competent authority if the position reaches or exceeds 0.1% of issued share capital. Previously, this threshold was 0.2% of issued share capital. The ESMA decision is in place for 3 months.

A regulated market for these purposes is a market regulated as such under the Markets in Financial Instruments Directive (Directive 2014/65/EU). ESMA maintains a register of regulated markets [here](#). The London Stock Exchange, Euronext Paris, Borsa Italiana and the Bolsa de Madrid are all examples of regulated markets.

The temporary additional transparency requirements apply to all natural and legal persons, irrespective of their country of residence.

The temporary additional transparency obligations do not apply to:

1. shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located outside the EU,
2. market making activities, and

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3. a net short position in relation to the carrying out of a stabilisation under the Market Abuse Regulation.

ESMA considers that lowering the reporting threshold is a precaution which will enable the monitoring of markets in light of the exceptional circumstances linked to the COVID-19 pandemic. ESMA considers the measures to be an appropriate and proportionate response to the threat posed to market confidence and to orderly functioning and integrity of markets in the EU.

Short selling prohibitions

In addition to the transparency requirements, regulators in Europe have issued temporary prohibitions on short selling certain instruments. The restrictions may change on a day to day basis.

The UK Financial Conduct Authority (“**FCA**”) has temporarily suspended short selling of certain European instruments, as notified via RNS. The FCA’s current restrictions and prohibitions on short selling may be found [here](#) (noting that this webpage links to prohibitions made on the basis of announcements by other European regulators at the bottom of the page).

Similar prohibitions have been issued by Consob in Italy (see [here](#)), the AMF in France (see [here](#)) and the FSMA in Belgium (see [here](#)). These prohibitions are valid until the end of the trading day today, 17 March 2020. It is possible that these prohibitions will be extended and supplemental measures relating to short selling will be taken.

In Spain, the CNMV imposed a ban creating or increasing a net short position on Spanish shares admitted to trading on Spanish trading venues. The ban covers all types of short transactions, including cash short sales, derivatives traded on trading venues or OTC derivatives which create or increase a net short position, even intra-day (with some limited exceptions). The ban lasts until the close of trading on 17 April 2020 and may be extended. The press release may be found [here](#).

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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