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Circular FSMA 2013\_10 of 28/05/2013 (update 21/12/2023)

## Practical implementation of the European Short Selling Regulation

### ESMA Guidelines on the exemption of market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps

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#### **Scope:**

This Circular is aimed at market participants who take short positions in respect of issuers of shares and sovereign issuers.

#### **Summary/Objectives:**

To elucidate the practical aspects of the implementation of the new European regulations regarding short selling and certain aspects of credit default swaps.

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#### **1. Introduction**

This circular aims to elucidate the practical aspects of the implementation of the new European regulations regarding short selling and certain aspects of credit default swaps, more specifically Regulation 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (hereinafter: the "Short Selling Regulation", abbreviated: the "SSR"), as well as the European rules adopted in implementation of the SSR.

This circular also contains the guidelines set out by ESMA on the exemption of market making activities and primary market operations under SSR. These set forth ESMA's position on the application of the law of the European Union and the supervisory practices that apply to it.

## 2. Transparency of significant net short positions

Pursuant to the SSR, market participants - regardless of whether they are domiciled or established within the European Union or in a third country - are required to notify the FSMA of:

- significant net short positions in issuers of shares traded on a regulated market or a multilateral trading facility within the meaning of MiFID, and for which Belgium is the most relevant market in terms of liquidity for the shares concerned;
- significant net short positions in Belgian sovereign issuers, and in European Union sovereign issuers where the department issuing the debt is located in Belgium;
- naked positions in Belgian sovereign credit default swaps, and in European Union sovereign credit default swaps where the department issuing the debt is located in Belgium.

These notifications must be made using the online platform 'Short Selling' developed by the FSMA. Users can access the platform and create a profile via this link: <https://portal-fimis.fsma.be/nl/Account/HomePublic>.

Before being able to submit notifications for a particular position holder, a user must demonstrate (once only) that he or she is authorised to do so. For this, click on 'My Position Holders' and 'Register new position holder' in the online platform, after which proof of authorisation can be given:

- If (an employee of) the position holder sends the notifications: by uploading a cover letter on letterhead and signature of the person in charge at the position holder (in PDF);
- In case of a Power of Attorney: by uploading a copy of the contract granting the PoA and a cover letter on letterhead of the person in charge at the PoA (merged in 1 PDF).

## 3. Exemption for market making activities and primary market operations

Market participants acting as market makers for financial instruments, derivatives and debt instruments of a sovereign issuer falling within the scope of the SSR, may be exempted from certain obligations pursuant to the SSR, provided that they first notify the competent authority of their intention to make use of the exemption<sup>1</sup>.

ESMA has drawn up guidelines pursuant to Article 16 of the ESMA Regulation (Regulation (EU) No. 1095/2010), with the aim of achieving a common approach to the application of exemptions to the SSR. The FSMA shall observe these guidelines and expects the same from market makers and primary dealers who submit a notification to the FSMA. A notification must be submitted to the FSMA by market makers which have their home Member State in Belgium within the meaning of Article 2, paragraph 1, i) of the SSR, as well as by primary dealers in Belgian Government Securities.

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<sup>1</sup> Article 17, paragraphs 1 and 5, SSR

The notification must be sent by e-mail to the FSMA, department Surveillance of Financial Markets, to the following address: [info.fin@fsma.be](mailto:info.fin@fsma.be).

**Annexes:** [FSMA\\_2013\\_10-1 / ESMA guidelines, dated 2/04/2013 ESMA/2013/74 - Exemption for market making activities and primary market operations under Regulation \(EU\) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of Credit Default Swaps](#)