

MIDDLE MARKET MONEY BLOG

YOUR GUIDE TO UNDERSTANDING REGULATORY DEVELOPMENTS TO NAVIGATE THE CAPITAL MARKETS

[HOME](#)[ABOUT](#)[OUR SERVICES](#)[CONTACT](#)**STAY CONNECTED** [Subscribe via RSS](#)**Subscribe by Email**[GO](#)**TOPICS**[Combination](#)[Affordable Care Act](#)[Tax Policy](#)[Belgium](#)[Real Estate](#)[Chambers](#)[Legal 500](#)[Kickstarter](#)[Information Technology](#)[Crowdfunding](#)[Pay Ratio](#)[Commercial Lending](#)[Accounting](#)[Capital Raising](#)[IPO](#)[Going dark](#)[Credit Ratings](#)[Financing & Lending](#)[European Union](#)[Investment Funds](#)[Venture Capital](#)[China](#)[Cross-Border Transactions](#)[Proxy Statement](#)[Say-on-pay](#)[Executive Compensation](#)[European Commission](#)[Cybersecurity](#)

The Impact on U.S. Market Participants of the Extraterritorial Effect of the New EU Disclosure Requirements for Short Selling

By [Orestis Omran](#), [Nora Wouters](#) on November 5, 2012

[Regulation \(EU\) 236/2012](#) (dated March 14, 2012) on short selling and certain aspects of credit default swaps became fully applicable in all EU Member States on November 1, 2012. In addition to the Regulation, the so called "short selling framework" comprises an [Implementing Regulation](#) and a series of Delegated Regulations which lay down technical standards with regard to the various provisions of the Regulation.

Applicability of Regulation

The Regulation imposes transparency obligations for net short positions in relation to financial instruments (including shares, sovereign debt, and credit default swaps (CDS) on sovereign debt) admitted to trading on a trading venue in the EU and whose trading venue is determined to be in the EU. It also imposes restrictions on so-called "uncovered" or "naked" positions on shares and sovereign debt. It is worth mentioning that uncovered CDS on sovereign debt positions are prohibited under the new Regulation. The Regulation continues to apply regardless of whether the financial instruments are traded on a stock exchange, a Multilateral Trading Facility (MTF) or over-the-counter. The application of the Regulation is unrelated as to where the trader is physically located or to the place of execution of the transaction as long as the 'principal trading venue' is in the EU. The full extraterritorial effect of the Regulation is one of the most important implications of the new legislation. ESMA has already published a list of shares admitted to trading on an EU-regulated market identifying the relevant competent authority for each share for the purposes of the Regulation. Moreover, the Regulation requires the publication every two years of a list of shares that have their principal trading venue outside of the EU. This list has not been completed yet.

Exemptive Authority

Notably, market participants involved in market making activities, as defined in the Regulation, can be exempted from the Regulation if a request in this respect has been made with the competent authority where the principal trading platform is situated prior to commencing the relevant market activities.

Two-Tier Reporting Model

The Regulation establishes a two-tier reporting model for significant net short positions on shares, creating obligations to market participants for disclosure to the public or to the competent Member State's authority where the principal trading venue is located. A private disclosure obligation (i.e., to the Member State's authority) is established for: (i) a net short position that equals 0,2% (0.2%) of the value of the issued share capital of a company admitted to trading in a Trading Venue; (ii) an increase of 0,1% (0.1%) above the threshold of 0,2% (0.2%) and for each similar increase (e.g., at 0,3%, 0,4%, 0,5%) as well as decreases of the same extent (0,1%) below these thresholds. Significant net short positions on sovereign debt will only

require private disclosure.

Public disclosure is required where: (i) a net short position that equals 0,5% of the value of the issued share capital of the company concerned; (ii) an increase of 0,1% above the threshold of 0,5% and for each similar increase (e.g., at 0,6%, 0,7%, 0,8%) as well as equivalent decreases (0,1%) below these thresholds. In addition, a notification obligation to the competent national authority exists for the holders of the following positions, as long as any such position reaches or falls below a relevant notification threshold determined by the delegated regulation: (i) a net short position relating to the issued sovereign debt of a Member State or of the Union; or (ii) an uncovered position on a credit default swap relating to an obligation of a Member State or of the Union.

Net short positions need to be calculated at 12:00 p.m. of the trading day of holding of the position, while notification or disclosure shall take place not later than 3.30 pm of the next trading day.

In order to comply with the above disclosure obligations, market participants are advised to designate and apply efficient compliance programs. Personnel need to be trained in order to conduct complicated calculations of net short positions, the method of which will be determined via a Delegated Regulation in a timely manner. In addition, clients need to be fully informed of the new obligations of the market participant, especially with regard to public disclosure and the consequences which this might have for the adopted investment strategies.



Topics: [Capital Markets](#), [Compliance](#), [European Commission](#)

Post a comment:

Name*

Email* (will not be published)

Comment*

SUBMIT COMMENT

*All fields are required.

[SEC Disclosure Guidance](#)

[Disclosure](#)

[Risk Factors](#)

[Independent Registered Public Accounting Firm](#)

[PCAOB](#)

[Rules & Regulations](#)

[Accounting Standards Codification](#)

[FASB](#)

[Hedge Funds](#)

[Credit Institutions](#)

[Corporate Governance](#)

[Compliance](#)

[FINRA](#)

[Insider Trading](#)

[Private Equity](#)

[Private Funds](#)

[Commodity Interests](#)

[Commodity Pool Operator](#)

[Commodity Trading Advisor](#)

[Facebook](#)

[Nasdaq](#)

[SIFMA](#)

[Conflict Minerals](#)

[Resource Extraction Disclosure](#)

[Emerging Growth Company](#)

[SPAC](#)

[SEC News](#)

[JOBS Act](#)

[Sarbanes-Oxley Act](#)

[Capital Markets](#)

[Federal Securities](#)

[General Solicitation](#)

[Exchange Act Registration](#)

[Private Placements](#)

[SEC Rulemaking](#)

[Dodd-Frank Act](#)

BLOG CONTRIBUTORS

[Michael J. Cochran](#)

[William L. Floyd](#)

[Orestis Omran](#)

[Nora Wouters](#)

ARCHIVES

2015

[May](#)
[April](#)
[February](#)
[January](#)

2014

[November](#)
[September](#)
[July](#)
[May](#)
[April](#)
[February](#)
[January](#)

2013

[October](#)
[September](#)
[August](#)
[July](#)
[June](#)
[May](#)
[April](#)
[March](#)
[February](#)
[January](#)

2012

[December](#)
[November](#)
[October](#)
[September](#)
[August](#)

MLA BLOGS

[Climate Change Insights](#)

[Government Contracts Advisor](#)

[Pay to Play Law](#)

[Politics, Law & Policy](#)

BLOG ROLL

[Corporate Counsel Blog](#)

[Harvard Law School Corporate Governance Blog](#)

[ISS' Corporate Governance Blog](#)

[Managed Funds Association Blog](#)

LINKS

[Alternative Investment Management Association](#)

[Financial Industry Regulatory Authority](#)

[LexisNexis Corporate & Securities Law Community](#)

[McKenna Long & Aldridge LLP](#)

[National Futures Association](#)

[SEC News Digest](#)

[U.S. Commodity Futures
Trading Commission](#)

[U.S. Securities and Exchange
Commission](#)

[Privacy Policy](#) [Disclaimer](#) © 2015 McKenna Long & Aldridge LLP Site by Firmseek