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Additional Information

Level 1 Regulation
Short Selling Regulation (SSR) Regulation (EU) No 236/2012

Topic
Scope

Subject Matter
EU Sovereign CDS trades booked outside the EU

Question
Does the Regulation impact EU sovereign CDS trades booked outside the EU (e.g. Head Office in NY or Tokyo) but executed by traders in the EU (where a single global CDS book is run)?

ESMA Answer

13-09-2012

Original language

[ESMA70-145-408 SSR Q&A, Q&A 4.2]

Recital 3 of the Regulation states that it is appropriate and necessary for the rules to take the legislative form of a regulation in order to ensure that provisions directly imposing obligations on private parties are applied in a uniform manner throughout the Union. Therefore, the legislative act taking a form of regulation excludes the possibility of any discretion by a national competent authority when applying the rules. Recital 16 of the Regulation specifies that in order to be effective, it is important that the transparency regime applies regardless of where the natural or legal person is located, including in a third country. Where that person has a significant net short position in a company that has shares admitted to trading on a trading venue in the Union or a net short position in sovereign debt issued by a Member State or by the Union, they need to be reported wherever these are executed or booked.

It should be noted that ‘regime’ is to be understood not as a mere set of rules for submission of a net short position notification, but as a broad concept encompassing as well rules applicable to entering into or acquiring a net short position.