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Additional Information

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

Topic
Determination of net short position

Subject Matter
Instruments giving claims to shares not yet issued (Subscription rights, convertible bonds)

Question
To what extent are instruments which give claims to shares not yet issued (subscription rights, convertible bonds) taken into account in the calculation of a net short position?

ESMA Answer

29-01-2013

Original language

[ESMA70-145-408 SSR Q&A, Q&A 6.3]

Instruments that give a claim to shares that are not issued yet should not be taken into account as long positions when calculating a net short position. In particular, subscription rights, convertible bonds and other comparable instruments are not long positions within the meaning of Article 3(2)(b) of the Regulation.

If a convertible bond converts into new shares rather than shares already in issue where possible under national law, the holding cannot be treated as a long position in determining whether there is a net short position in the share. However, if the bonds (often known as exchangeable bonds) convert into shares already in issue, it would be legitimate to take the equity component of the bond into account in the net short position calculation, subject to the condition set by Article 3(2)(b) of the Regulation being met and to the method of calculation set by article 10 of the DR.

If the convertible bondholder does not know what kind of shares (new shares or shares already issued) the bond will convert into, then the bond should not be taken into account as a long position for the sake of calculation of net short positions.