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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
“Publicly available information” on an index, basket of securities or ETF composition

Question
Under Article 3(3) of the Regulation and Annex II Part 1.3 & 2.4 of the DR, firms need only to look-through indices, baskets and ETFs to the extent that doing so is reasonable having regard to publicly available information. How should this condition be understood?

ESMA Answer

29-01-2013

Original language

[ESMA70-145-408 SSR Q&A, Q&A 6.9]

ESMA understands “publicly available information” on an index, basket of securities or ETF composition as information which is easy to access on the market operator’s or issuer’s website and which is obtainable free of charge. Such information, notably on indices, is generally available free of charge when provided with a certain delay.

ESMA is aware that the provision of a real time index, basket or ETF’s composition is likely to be charged. However, it should be recalled that there is no requirement under the Regulation to obtain information on the composition of the above on a real time basis. ESMA considers that market participants should strive to use the most recent publicly available information for look-through purposes.

ESMA would like to specify that “acting reasonably” relates only to obtaining information about the composition and not to how investors process that information for conducting the calculation of the net short position. The Regulation is straightforward and requires that the index weighting, the composition of the basket of securities and the interests held in ETFs are considered and used in this calculation including when such information could not be integrated as such in the firm’s monitoring system.