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Additional Information

Level 1 Regulation

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

Topic

Other SSR-related topics

Subject Matter

Net short positions - Reporting by a legal entity within a group when the group no longer cross a threshold

Question

In the case of a group, both the group and the legal entity within the group acquire positions that exceed the 0.2% threshold simultaneously. Subsequently, only the group's position falls below the 0.2% threshold. Should the legal entity within the group then report even though it has not crossed up or down another threshold?

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Original language

[ESMA70-145-408 SSR Q&A, Q&A 8.10]

The overall net short position of a group should be reported according to Article 5 of the Regulation. In this regard, it is recalled that the group is required to report its net short position when it falls below, reaches or exceeds applicable notification thresholds.

According to Article 13(3) of the DR, the legal entity within this group does not have to report as the said group has a reportable position on that date.

However, this article prescribes that a net short position has to be reported at a legal entity level in the case where the group overall net short position is under the minimum notification threshold (e.g. 0.2% for equities).

It results from the DR that if on the trading day following the notification by the group, the legal entity within the group still holds a net short position reaching or exceeding a notification threshold, then the legal entity should notify its net short position even though such position was already taken into account in the notification previously submitted at group level.

In such a case, the position date that has to be specified in the legal entity's notification (date on which the position was created, changed or ceased to be held as provided by RTS 1^[1]), should be the trading day on which the group's last notification (i.e. the one crossing down the threshold) was submitted.

Example:

- **Day 1:** The group has an overall net short position of 1.0%. One of its legal entities has a net short position of 0.5% that was taken into account by calculating the group's overall net short position. The group's overall net short position has to be notified/disclosed by 15.30h of the next trading day (day 2).

- **Day 2:** The group notifies/discloses its overall net short position of 1.0% before 15.30h (reporting date: day 2; position date: day 1); there is no further notification requirement for the one legal entity. On that day 2 the group's overall net short position falls below the applicable notification thresholds and is 0.1%. One of the group's legal entities has a net short position of 0.5% that was taken into account by calculating the group's overall net short position for that day 2. Again the group's overall net short position has to be notified/disclosed by 15.30h of the next trading day (day 3).
 - **Day 3:** The group notifies/discloses its overall net short position of 0.1% until 15.30h (reporting date: day 3; position date: day 2). There is no further notification requirement for the one legal entity. On that day 3 the group's overall net short position stays below the applicable notification thresholds and is still 0.1%. But the one legal entity of that group has a net short position of 0.5% (that was taken into account by calculating the group's overall net short position for that day 3). Now the legal entity net short position has to be notified/disclosed by 15.30h of the next trading day (day 4). But there is no notification requirement for the group's overall net short position.
 - **Day 4:** The legal entity notifies/discloses its net short position of 0.5% (reporting date: day 4; position date: day 3). The group has no overall net short position to report.
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[1] Commission Delegated Regulation (EU) N0 826/2012.