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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 - Meaning of position holder and reporting entities

Question

Is there a definition of the terms "position holder" and "reporting person", in order to establish for instance if the position holder is the fund, i.e. the legal entity which owns the short position, or the discretionary investment manager who makes the decision to take the short position.

29-01-2013

Original language

[ESMA70-145-408 SSR Q&A, Q&A 8.11]

In principle the position holder is the person, natural or legal which owns the position.

Nevertheless the DR develop specific approaches to calculation and reporting of net short positions for, on one hand, management entities of several funds or managed portfolio and group constituted of several legal entities on the other hand.

With respect to management activities as defined in Article 12(1)(b) of the DR, the position holder when several funds pursue the same investment strategy is the management entity. ESMA considers that the position holder should also be the management company in cases when only one fund has reportable positions.

With respect to group of legal entities, the position holder can be, depending on the situation set out in Art 13 of the DR, either a legal entity within the group or the group itself. In general, the position holder and the reporting person (i.e. the legal or natural person who makes the notification to the competent authority) should be the same entity. However in the case of a group, another legal entity (reporting entity) which is part of the group can be appointed to report the group's net short position when a regulatory threshold is crossed (see Q&A 8.6 above).

In addition, there is in all cases the possibility to engage or mandate an external third party, including an investment firm on behalf of its clients, to report and disclose the net short position of the position holder but this does not affect the way the field "*position holder*" is filled in.