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Additional Information

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

Topic
Uncovered short sales

Subject Matter
Easy-to-borrow list and locate arrangement

Question
Is it permitted - in the context of Article 12, first paragraph, (c) of the Regulation - to meet the requirement to have a locate arrangement by simply referring to an existing “easy-to-borrow or purchase list”?

ESMA Answer

28-05-2018

Original language

[ESMA70-145-408 SSR Q&A, Q&A 10.13]

In order to meet the requirement to have a locate arrangement contained in Article 12(1)(c) of the Regulation as further specified in Article 6 of Commission Implementing Regulation (EU) 827/2012 (ITS), all the relevant conditions therein contained must be met.

Therefore, the practice of simply referring to an “easy-to-borrow or purchase” list of shares does not *per se* meet Article 12(1)(c) of the Regulation.

When specifying Article 12(1)(c) of the Regulation, Article 6 of the ITS identifies three different categories of locate arrangements: ‘*standard locate arrangements’*, ‘*standard same day locate arrangements*’ and ‘*easy to borrow or purchase arrangements*’ for liquid shares or shares included in the main national equity index that are the underlying of derivatives traded on a trading venue.

In relation to ‘*standard same day locate arrangements*’ and ‘*easy to borrow or purchase locate arrangements*’, Article 6(3)(c) and 6(4)(b) of the ITS lay down that, among other conditions, a third party should give the person intending to enter into a short sale an “easy to borrow or purchase confirmation for the quantity of shares affected by the possible short sale, taking into account the market conditions at the time of providing the confirmation. As an alternative to such confirmation, the third party can provide a confirmation that it has put on hold the requested number of shares for the person intending to enter into a short sale.

Therefore, ESMA deems that an “easy-to-borrow or purchase list” can be considered as an “easy to borrow or purchase confirmation” only where it is complemented for each share in the list with an assessment of:

- the maximum amount of shares affected by the possible short sale;

- the market conditions at the time of providing the list, including the liquidity of the shares concerned, and any other information available on the supply of the shares.

For the above list to be used as a “easy to borrow or purchase confirmation” for subsequent short sales, the above assessment has to be reviewed to consider the relevant quantity and any a change in the market conditions.