

COMMISSION DELEGATED REGULATION (EU) 2022/27**of 27 September 2021****amending Regulation (EU) No 236/2012 of the European Parliament and of the Council as regards the adjustment of the relevant threshold for the notification of significant net short positions in shares****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps ⁽¹⁾, and in particular Article 5(4) thereof,

Whereas:

- (1) Regulation (EU) No 236/2012 establishes the obligation to notify to competent authorities of significant net short positions in relation to the issued share capital of a company that has shares admitted to trading on a Union trading venue, where the position reaches or falls below the relevant notification threshold. It is necessary for the Commission to monitor whether such relevant notification threshold remains appropriate in light of developments in financial markets and to assess whether it is necessary to modify that threshold in accordance with Article 5(4) of that Regulation.
- (2) In early 2020, a substantial selling pressure and unusual volatility stemming from the global outbreak of COVID-19 led to significant downward price spirals affecting issuers from all sectors across financial markets. The European Securities and Markets Authority (ESMA) made use of its intervention powers in exceptional circumstances to temporarily lower the relevant notification threshold for significant net short positions in shares, in order to improve both ESMA's and regulators' monitoring activity of such positions, determine whether more stringent actions could be appropriate and be able to react quickly.
- (3) As the lower relevant notification threshold for significant net short positions in shares, which has been in place for twelve consecutive months and, due to partially improved market conditions, could no longer be extended as an emergency measure, it is appropriate to assess the impact of such measure and determine whether it should be made permanent by replacing the existing threshold. In that regard, the Commission takes into account the opinion ⁽²⁾ that ESMA issued on 13 May 2021.
- (4) The recent developments in financial markets observed by the Commission, such as the instability caused by the global outbreak of COVID-19, which has led to a more frequent recourse to emergency measures on short selling by regulators and ESMA, as well as the growing risk of retail investors being involved in short squeezes, have stressed the importance to gather additional intelligence in significant net short positions in shares on permanent basis, which is critical for market surveillance purposes. In that regard, ESMA's opinion assessed that the lower relevant notification threshold significantly improved transparency and monitoring of significant net short positions in shares at individual, sectorial and market-wide level, resulting in an increase in regulatory efficiency. ESMA also considered that marginal costs for implementation by market participants should be negligible, considering that they have been applying such threshold for several months. Furthermore, the Commission considers that uncertainty with respect to the regulatory reporting obligation should be avoided and rules and obligations in this respect should be stable. On that basis, and taking into account recommendations set out in ESMA's opinion, with which the Commission agrees, it is appropriate to amend the current relevant notification threshold and set it permanently at 0,1 %.

⁽¹⁾ OJ L 86, 24.3.2012, p. 1.

⁽²⁾ ESMA70-156-4262.

(5) Regulation (EU) No 236/2012 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 5 of Regulation (EU) No 236/2012, paragraph 2 is replaced by the following:

‘2. A relevant notification threshold is a percentage that equals 0,1 % of the issued share capital of the company concerned and each 0,1 % above that.’

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 September 2021.

For the Commission
The President
Ursula VON DER LEYEN
