Title: The Short Selling (Notification Thresholds) Regulations 2021	De minimis assessment
SI No: 5	**Date: 15/12/2020**
Other departments or agencies: Click here to enter text.	**Type of regulation: Domestic**
Contact for enquiries: **Arvin Jeboo**	**Date measure comes into force: 01/02/2021**
Cost of Preferred (or more likely) Option	**Net cost to business per year** (EANDCB in 2019 prices) **£m**

1. What is the problem under consideration? Why is government intervention necessary?

Short selling is the practice of selling a security that is not owned by the seller with the intention of buying it back later at a lower price to make a profit. Short selling is a legitimate practice that provides benefits to the market. However it can be potentially disruptive, undermining confidence in the market and preventing it from running effectively.

The Short Selling Regulation (SSR)[1] requires persons to notify the Financial Conduct Authority (FCA) of their net short positions in the issued share capital of companies once certain thresholds are exceeded. The baseline for this threshold is 0.2% of the issued share capital of the company concerned.

The data collected through these notifications supports the FCA in monitoring short selling activity and where necessary taking action to prevent disruptive short selling activity, or taking action against persons which breach their obligations under the SSR.

In March 2020 the European Securities and Markets Authority (ESMA) made a decision to temporarily apply a threshold of 0.1% for shares admitted to trading on regulated markets in response to COVID uncertainty. This decision has subsequently been renewed in June, September and December. Such decisions ceased to have effect in the UK at the end of the Transition Period (11pm 31 December 2020) meaning the threshold has reverted to 0.2%.

FCA data since March shows that short-selling activity has remained elevated. This increased market volatility and elevated short selling activity is expected to continue into 2021. HM Treasury is therefore bringing forward legislation to amend the threshold to 0.1% for all issuers with shares admitted to trading on UK trading venues, which are UK Regulated Markets and UK Multilateral Trading Facilities (MTFs). This change will ensure the FCA has the necessary data to monitor short selling activity and to act earlier against any abusive activity that impacts on the integrity of the market.

2. What are the policy objectives and the intended effects? (Maximum 5 lines)

The objective is to ensure the FCA has the necessary data it needs to monitor and respond to short selling activity during a period of increased market volatility.

[1] 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, as amended by the Short Selling (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1321)

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option (Maximum 5 lines)

If the Treasury were not to take action the threshold would revert back to 0.2% on a permanent basis. By amending the threshold to 0.1%, and expanding it to cover UK trading venues under the SSR (UK Regulated Markets and UK MTFs), this intervention will ensure the FCA has an early and accurate oversight of short selling activity. This is critical to the FCA's ability to effectively monitor short selling activity, and to take action against any short selling activity that impacts on the integrity of the market. It will also minimise disruption to reporting persons, who would otherwise have to make systems changes to reflect the change in threshold.

4. Please justify why the net impacts (i.e. net costs or benefits) to business will be less than £5 million a year.

This SI will require persons to notify the FCA when they have a net short position in the issued share capital of companies which exceeds or falls below the 0.1% threshold. This requirement applies to all equity instruments in scope of the SSR, with a number of exemptions:

1) Shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country;
2) Transactions performed due to market making activities; and
3) Net short positions in relation to the carrying out of buy-back programmes and stabilisation under the Market Abuse Regulation

Approximately 400 persons report to the FCA under this requirement[2], with approximately 70% of notifications made for regulated markets.

Reporting persons will generally have automated systems that identify when the threshold is breached, in order to notify the FCA. Notification is then sent to the FCA through the FCA's Electronic Submission System

Transitional costs

As set out above although reporting persons have automated systems to carry out this function, there would still be a cost associated with any change to the threshold. Maintaining the 0.1% threshold set by ESMA will therefore mean that firms do not incur costs they would have incurred if the threshold were to revert to 0.2% on a permanent basis. The FCA has advised reporting persons that they can continue to report at the 0.1% threshold in the intervening period between the end of the Transition Period and this SI coming into force on 1 February. The transitional costs arising from this change will therefore be minimal.

This SI expands the scope of the lower reporting threshold in comparison to the ESMA decision, requiring reporting persons to notify the FCA in respect of shares admitted to trading on UK MTFs, not just those admitted to trading on UK regulated markets. This change brings the requirements back in line with the scope of the normal reporting requirements under the SSR. FCA engagement, along with FCA reporting data since March, suggests that the majority of reporting persons are already reporting at the lower threshold. In addition some reporting persons do not have systems which allow them to report at two different thresholds for regulated markets and MTFs, and so some have been complying with the two different

[2] It is not possible to determine the exact number of firms subject to this requirement as the SSR has an instrument-based, not firm-based, scope.

thresholds introduced through the ESMA decision by introducing manual checking processes. This change therefore ensures the regime reflects what is already common practice in the sector, meaning the transitional costs will be minimal.

Ongoing costs

As set out above, reporting persons will generally have automated systems to ensure they are complying with this requirement. Once these systems have been changed to reflect the threshold, the ongoing cost of reporting at a 0.1% threshold would not be significantly different to reporting at a 0.2% threshold. In addition, applying the 0.1% reporting threshold to UK MTFs as well as UK regulated markets will minimise the cost and impact for reporting persons. The ongoing costs arising from this change will therefore be minimal.

Benefits

This change will ensure the FCA has the necessary information to effectively monitor short selling activity. It will help the FCA act against any short selling activity that impacts on the integrity of the market and disrupts companies from raising funds on the market – providing benefits to reporting firms and the market as a whole.

5. Please confirm whether your measure could be subject to call-in by BRE under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**
   No
b) **Disproportionate burdens on small businesses**
   No - as set out above, the approach taken through this SI is intended to provide continuity for businesses, including small businesses, minimising cost and disruption.
c) **Significant gross effects despite small net impacts**
   No
d) **Significant wider social, environmental, financial or economic impacts**
   No
e) **Significant novel or contentious elements**
   No

<u>Sign-off for de minimis assessment: SCS</u>

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of Securities and Markets Team

Signed: ***Tom Duggan*** Date: 15/12/2020

SCS of Better Regulation Unit

Signed: ***Joanna Key*** Date: 18/12/2020

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***John Glen*** Date: 17/12/2020

Further information sheet

Please provide additional evidence in subsequent sheets, as required.