

Financial Stability and Market Confidence sourcebook

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Chapter 2

Short selling

2.1 Application and purpose

Application

2.1.1 **R** [deleted]

2.1.1A **G** This chapter is relevant to all natural and legal persons to whom the *short selling regulation* applies, whether or not they are regulated by the *FCA*.

Purpose

2.1.2 **G** The purpose of this chapter is to provide *guidance* in relation to the *FCA's* functions under the *short selling regulation*.

Note: Other parts of the *Handbook* that may also be relevant to natural and legal persons to whom the *short selling regulation* applies include:

Chapter 2 of ■ SUP (the Supervision manual) and ■ DEPP (the Decision Procedure and Penalties manual).

The following Regulatory Guides are also relevant:

1. the Enforcement Guide (*EG*)

2.5 Measures to prohibit, restrict or limit transactions in short selling

Approach to imposing measures

- 2.5.1** **G** The FCA is required by article 23 of the *short selling regulation* to consider whether to impose measures to prohibit or restrict short selling or otherwise limit transactions in a *financial instrument* on a *trading venue* where the price of that *financial instrument* on that *trading venue* has fallen significantly during a single *trading day* in relation to the closing price on that venue on the previous *trading day*. In fulfilling this obligation, the FCA will assess:
- (1) whether the price fall is or may become disorderly; and, if so in either case,
 - (2) whether the imposition of measures to prohibit, restrict or limit transactions will prevent a further disorderly decline in the price of the *financial instrument*.
- 2.5.2** **G** The FCA will assess whether the price fall in a *financial instrument* on a *trading venue* is or may become disorderly having regard to at least the following factors:
- (1) whether there have been violent movements in the price of the particular *financial instrument* on a particular *trading venue*, including any sudden or significant movements in price of a *financial instrument* during the *trading day*;
 - (2) whether there is evidence of unusual or improper trading in the *financial instrument* on a particular *trading venue* which could indicate that there was pressure to set the price of the *financial instrument* at a level that would be considered abnormal for that *financial instrument*; and
 - (3) whether there are unsubstantiated rumours or dissemination of false or misleading information regarding the *financial instrument*.
- The list above is not exhaustive and the FCA will consider such other factors as it considers appropriate.
- 2.5.3** **G** The FCA may consider that the price fall in a *financial instrument* is not disorderly, for example, if the FCA considers that there is legitimate cause for a price fall in trading, such as the announcement of poor financial results.

2.5.4 **G** The *FCA* will consider at least the following factors when assessing whether measures to prohibit or restrict short selling or otherwise limit transactions are necessary or likely to prevent a further disorderly decline in the price of the *financial instrument*:

- (1) the volume of trading in that *financial instrument* on the *trading venue* as compared with the total trading volume in the *financial instrument* over at least that *trading day*; and
- (2) whether the price of the *financial instrument* has stabilised after the significant fall in price.

The list above is not exhaustive and the *FCA* will consider such other factors as it considers appropriate.

2.5.5 **G** Where the *FCA* imposes measures under article 23 of the *short selling regulation* it will normally specify that the measures will not apply to natural or legal persons who have satisfied the criteria to use the *market maker exemption* or the *authorised primary dealer exemption* and who are included on the list maintained and published by *ESMA* pursuant to article 17(13) of the *short selling regulation*.

Exchange rate calculations

2.5.6 **G**

- (1) For the purposes of article 23(1)(b) of Commission Delegated Regulation (EU) No 918/2012 the *FCA* will convert the figure of EUR 0.50 into pounds sterling using the daily spot foreign exchange rate of Sterling to Euro of the Bank of England applicable at the end of the first *business day* of October 2012 rounded up to the nearest £0.01. The *FCA* will state this figure (the 'sterling figure') on its public website.
- (2) The rate will be calculated on the same basis at the end of the first *business day* of October every subsequent year, unless the situation in (3) occurs in the intervening period, in which case the *FCA* will recalculate the sterling figure.
- (3) The situation referred to in (2) is if the daily spot foreign exchange rate of the Bank of England of Sterling to Euro fluctuates for a period of 20 consecutive *business days* by more than 10% from the rate last used to calculate the sterling figure.
- (4) If the situation in (3) occurs more than once in a year, the *FCA* will convert the figure of EUR 0.50 into pounds sterling using the daily spot foreign exchange rate of Sterling to Euro of the Bank of England applicable at the end of the 20th *business day* of the period referred to in (3).

2.5.7 **G** The *FCA* will treat the FTSE 100 index as the main national equity index of the Member State for the purposes of article 6(4) of Commission Implementing Regulation (EU) No 827/2012 and article 4 of Commission Delegated Regulation (EU) No 826/2012 and article 23(1) of Commission Delegated Regulation (EU) No 918/2012, all subject to approval by European Parliament and Council.

2.6 Procedures relating to the market maker exemption and the authorised primary dealer exemption

[**Note:** The *FCA* has powers under the *short selling regulation* to prohibit a natural or legal person from using the *market maker exemption* and the *authorised primary dealer exemption* if the *FCA* considers that that person does not satisfy the conditions of the exemption that that person has notified the *FCA* it intends to use.]

Decision on use of the market maker exemption or the authorised primary dealer exemption

- 2.6.1 **G** Pursuant to the Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (SI 2012/2554), the *FCA* will direct how notifications to use the *market maker exemption* or the *authorised primary dealer exemption* shall be made. Such directions will be published on the *FCA* website and listed in ■ FINMAR 2 Annex 1 G.
- 2.6.2 **G**
- (1) If the *FCA* considers that a natural or legal person ('P') who has notified the *FCA* of his intention to use either the *market maker exemption* or the *authorised primary dealer exemption* does not satisfy the criteria to use the *market maker exemption* or the *authorised primary dealer exemption*, the *FCA* will send a letter to P setting out the reasons why it is minded to prohibit P from using the *market maker exemption* or the *authorised primary dealer exemption*.
 - (2) P will be given the opportunity to make written representations to the *FCA* concerning P's use of the *market maker exemption* or the *authorised primary dealer exemption*.
 - (3) The *FCA* will decide whether to prohibit P's use of either the *market maker exemption* or the *authorised primary dealer exemption* having regard to P's notification and any written representations made by P. The decision whether or not to prohibit the use by P of either the *market maker exemption* or the *authorised primary dealer exemption* will be made by senior staff members of the *FCA* who were not involved in the initial consideration of P's notification.

**Review of a decision to prohibit the market maker exemption
or the authorised primary dealer exemption**

2.6.3

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If P is not satisfied with the *FCA's* decision to prohibit P's use of the *market maker exemption* or the *authorised primary dealer exemption*, P may seek a review of the decision. This will be conducted by a group of at least three senior *FCA* staff. None of the group conducting the review will have been connected with the earlier decision taken in respect of P's use of the *market maker exemption* or the *authorised primary dealer exemption*. The review may take place after the expiry of the 30 day period in which the notification should be made under the *short selling regulation*, but within 3 months of the decision referred to in ■ FINMAR 2.6.2 G (3).

List of directions on how notifications to use the market maker exemption or authorised primary dealer exemption should be made

This table belongs to ■ FINMAR 2.6.1 G

[to follow]

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Schedule 1 Record keeping requirements

Sch 1.1 G

There are no record-keeping requirements in *FINMAR*.

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Schedule 2 Notification requirements

Sch 2.1 G

There are no notification requirements in *FINMAR*.

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Schedule 3 Fees and other required payments

Sch 3.1 G

There are no requirements for fees in *FINMAR*.

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Schedule 4 Powers Exercised

Sch 4.1 G
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Schedule 5 Rights of action for damages

Sch 5.1 G

There are no rules in *FINMAR*.

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Schedule 6 Rules that can be waived

