TECHNICAL STANDARDS (SHORT SELLING REGULATION) (EU EXIT) INSTRUMENT 2019

Powers exercised

A. The Financial Conduct Authority ("the FCA"), being an appropriate regulator within the meaning of The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 ("the Regulations"), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

Pre-conditions to making

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

F. The following EU Regulations are amended in accordance with Annexes A–C of this instrument.

(1)	(2)
Commission Delegated Regulation (EU) 826/2012 of 29 June 2012	
supplementing Regulation (EU) 236/2012 of the European Parliament and	
of the Council with regard to regulatory technical standards on notification	Annex
and disclosure requirements with regard to net short positions, the details of	A
the information to be provided to the European Securities and Markets	Α
Authority in relation to net short positions and the method for calculating	
turnover to determine exempted shares.	

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	Commission Implementing Regulation (EU) 827/2012 of 29 June 2012		
	laying down implementing technical standards with regard to the means for		
	public disclosure of net position in shares, the format of the information to		
	be provided to the European Securities and Markets Authority in relation to		
	net short positions, the types of agreements, arrangements and measures to	Annex	
	adequately ensure that shares or sovereign debt instruments are available	В	
	for settlement and the dates and period for the determination of the		
	principal venue for a share according to Regulation (EU) 236/2012 of the		
	European Parliament and of the Council on short selling and certain aspects		
	of credit default swaps.		
Ī	Commission Delegated Regulation (EU) 919/2012 of 5 July 2012		
	supplementing Regulation (EU) 236/2012 of the European Parliament and		
of the Council on short selling and certain aspects of credit default swaps		Annex	
	with regard to regulatory technical standards for the method of calculation	ndards for the method of calculation	
	of the fall in value for liquid shares and other financial instruments.		

Commencement

G. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

Citation

H. This instrument may be cited as the Technical Standards (Short Selling Regulation) (EU Exit) Instrument 2019.

By order of the Board 28 March 2019

In this instrument, underlining indicates new text and striking through indicates deleted text.

Annex A

COMMISSION DELEGATED REGULATION (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares

(Text with EEA relevance)

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down regulatory technical standards specifying the following:

- (a) the details of the information on net short positions to be provided to competent authorities the FCA and disclosed to the public by a natural or legal person pursuant to Article 9(5) of Regulation (EU) No 236/2012;
- (b) the details of the information to be provided to the European Securities and Markets Authority (hereinafter 'ESMA') by the competent authority pursuant to Article 11(3) of Regulation (EU) No 236/2012;
- (c) the method for calculation of turnover to determine the principal venue for the trading of a share pursuant to Article 16(3) of Regulation (EU) No 236/2012.

CHAPTER II

DETAILS OF THE INFORMATION ON NET SHORT POSITIONS TO BE NOTIFIED AND DISCLOSED

(ARTICLE 9 OF REGULATION (EU) No 236/2012)

Article 2

Notification of net short positions in shares, sovereign debt and uncovered sovereign credit default swaps to competent authorities

1. A notification made under Article 5(1), Article 7(1) or Article 8 of Regulation (EU) No 236/2012 shall contain the information specified in Table 1 of Annex I to this Regulation.

The notification shall be made using a form issued by the competent authority <u>FCA</u> which shall take the format set out in Annex II.

- 2. Where the competent authority <u>FCA</u> has secure systems in place that allows it to fully identify the person filing the notification and the position holder, including all the information contained in fields 1 to 7 of Table 1 of Annex I, the corresponding fields in the form may be left blank in the notification format.
- 3. A natural or legal person who has submitted a notification referred to in paragraph 1 which contains an error shall send, on becoming aware of the error, a cancellation to the relevant competent authority FCA.

The cancellation shall be made using a form issued by that competent authority the FCA which shall take the format set out in Annex III.

The natural or legal person concerned shall submit a new notification in accordance with paragraphs 1 and 2 if necessary.

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CHAPTER III

DETAILS OF THE INFORMATION TO BE PROVIDED TO ESMA IN RELATION TO NET SHORT POSITIONS

(ARTICLE 11 OF REGULATION (EU) No 236/2012)

Article 4

Periodic information

Pursuant to Article 11(1) of Regulation (EU) No 236/2012, competent authorities shall provide ESMA with the following information on a quarterly basis:

(a) the daily aggregated net short position on each individual share in the main national equity index as identified by the relevant competent authority;

- (b) the end of quarter aggregated net short position for each individual share which is not in the index referred to in point (a);
- (e) the daily aggregated net short position on each individual sovereign issuer;
- (d) where applicable, daily aggregated uncovered positions on credit default swaps of a sovereign issuer.

Information upon request

Information to be provided by a relevant competent authority on an ad hoc basis pursuant to Article 11(2) of Regulation (EU) No 236/2012 shall include all requested information specified by ESMA that has not previously been submitted by the competent authority in accordance with Article 4 of this Regulation.

CHAPTER IV

METHOD OF CALCULATION OF TURNOVER TO DETERMINE THE PRINCIPAL TRADING VENUE FOR A SHARE

(ARTICLE 16 OF REGULATION (EU) No 236/2012)

Article 6

Turnover calculation to determine the principal venue for the trading of a share

- 1. When calculating turnover pursuant to Article 16 of Regulation (EU) No 236/2012, a relevant competent authority the FCA shall use the best available information, which may include:
 - (a) publicly available information;
 - (b) transaction data obtained under Article 25(3) of Directive 2004/39/EC of the European Parliament and of the Council Article 26(1) and (2) of Regulation 600/2014/EU;
 - (c) information from trading venues where the relevant share is traded;
 - (d) information provided by another competent authority a supervisory authority of a third country, including a competent authority of a third country;
 - (e) information provided by the issuer of the relevant share;
 - (f) information from other third parties, including data providers.
- 2. In determining what constitutes the best available information, a relevant competent authority the FCA shall ensure so far as reasonably possible that:
 - (a) it uses publicly available information in preference to other sources of information;
 - (b) the information covers all trading sessions during the relevant period, irrespective of whether the share traded during all of the sessions;

- (c) transactions received and included in the calculations are counted only once;
- (d) transactions reported through a trading venue but executed outside it are not counted.
- 3. The turnover of a share on a trading venue shall be deemed to be zero where the share is no longer admitted to trading on that trading venue even if the share was admitted to trading on the trading venue during the relevant calculation period.

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

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Annex B

COMMISSION IMPLEMENTING REGULATION (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps

(Text with EEA relevance)

Article -1

Definitions

- 1. For the purposes of this Regulation the following definition applies:
 - (a) 'exit day' has the meaning given in the European Union (Withdrawal) Act 2018.

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject Matter

This Regulation lays down implementing technical standards specifying the following:

- (a) the means by which information on net short positions may be disclosed to the public by natural or legal persons as well as the format of information to be provided to the European Securities and Markets Authority (hereinafter "ESMA") by competent authorities pursuant to Article 9(6) and Article 11(4) of Regulation (EU) No 236/2012;
- (b) the types of agreements, arrangements and measures that adequately ensure that the shares are available for settlement and the types of agreements or arrangements that adequately ensure that the sovereign debt is available for settlement pursuant to Article 12(2) and 13(5) of Regulation (EU) No 236/2012;

(c) the date and period for principal trading venue calculations, notification to ESMA and the effectiveness of the relevant list pursuant to 16(4) of Regulation (EU) No 236/2012.

CHAPTER II

MEANS FOR PUBLIC DISCLOSURE OF SIGNIFICANT NET SHORT POSITIONS IN SHARES

[ARTICLE 9 OF REGULATION (EU) No 236/2012]

Article 2

Means by which information may be disclosed to the public

Information on net short positions in shares shall be disclosed to the public by posting it on a the central website operated or supervised by the relevant competent authority FCA pursuant to Article 9(4) of Regulation (EU) No 236/2012. The information shall be disclosed to the public through means which:

- (a) publish it in the format specified in Annex I in such a way as to allow the public consulting the website to access one or more tables offering all the relevant information on positions per share issuer;
- (b) allow users to identify and filter on whether the net short positions in a share issuer at the time of accessing the website has reached or exceeded the relevant publication threshold;
- (c) provide for historical data on the published net short positions in a share issuer;
- (d) include, whenever technically possible, downloadable files with the published and historical net short positions in a machine-readable format, meaning that the files are sufficiently structured for software applications to identify reliably individual statements of fact and their internal structure;
- (e) show for one day, together with the information specified in point (b), the net short positions that are published because they have fallen below the publication threshold of 0.5 % of the issued share capital, before removing and transferring the information to a historical data section.

CHAPTER III

FORMAT OF THE INFORMATION TO BE PROVIDED TO ESMA BY COMPETENT AUTHORITIES IN RELATION TO NET SHORT POSITIONS

[ARTICLE 11 OF REGULATION (EU) No 236/2012]

Article 3

Format of the periodic information

1. The information to be provided on a quarterly basis to ESMA on net short positions in shares, sovereign debt and credit default swaps pursuant to Article 11(1) of Regulation

- (EU) No 236/2012 shall be provided by relevant competent authorities in the format specified in Annex II to this Regulation.
- 2. The information referred to in paragraph 1 shall be sent to ESMA electronically through a system established by ESMA that ensures that the completeness, integrity and confidentiality of the information are maintained during its transmission.

Format of the information to be provided upon request

- 1. A relevant competent authority shall provide the information on net short positions in shares and sovereign debt or on uncovered positions relating to sovereign credit default swaps pursuant to Article 11(2) of Regulation (EU) No 236/2012 in the format specified by ESMA in its request.
- 2. Where information requested relates to information contained in the notification received by the competent authority pursuant to Articles 5, 7 and 8 of Regulation (EU) No 236/2012, that information shall be provided in accordance with the requirements established in Article 2 of Commission Delegated Regulation (EU) No 826/2012.
- 3. Information requested shall be sent by the competent authority in electronic format, using a system established by ESMA for exchanging information that ensures that the completeness, integrity and confidentiality of the information are maintained during its transmission.

CHAPTER IV

AGREEMENTS, ARRANGEMENTS AND MEASURES TO ADEQUATELY ENSURE AVAILABILITY FOR SETTLEMENT

[ARTICLES 12 AND 13 OF REGULATION (EU) No 236/2012]

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Article 6

Arrangements and measures to be taken in relation to short sales of a share admitted to trading on a trading venue

[Article 12(1)(c) of Regulation (EU) No 236/2012]

- 1. Paragraphs 2, 3 and 4 shall determine the arrangements and measures to be taken in relation to short sales of a share admitted to trading on a trading venue pursuant to Article 12(1)(c) of Regulation (EU) No 236/2012.
- 2. Standard locate arrangements and measures shall mean arrangements, confirmations and measures that include each of the following elements:
 - (a) for locate confirmations: a confirmation provided by the third party, prior to the short sale being entered into by a natural or legal person, that it considers

- that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions and which indicates the period for which the share is located;
- (b) for put on hold confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that it has at least put on hold the requested number of shares for that person.
- 3. Standard same day locate arrangements and measures shall mean arrangements, confirmations and measures that include each of the following elements:
 - (a) for requests for confirmation: a request for confirmation from the natural or legal person to the third party which states that the short sale will be covered by purchases during the day on which the short sale takes place;
 - (b) for locate confirmations: a confirmation provided by the third party prior to the short sale being entered into that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions, and which indicates the period for which the shares are located;
 - (c) for easy to borrow or purchase confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that the share is easy to borrow or purchase in the relevant quantity taking into account the market conditions and other information available to that third party on the supply of the shares or, in the absence of this confirmation by the third party, that it has at least put on hold the requested number of shares for the natural or legal person;
 - (d) for monitoring: an undertaking by the natural or legal person to monitor the amount of the short sale not covered by purchases;
 - (e) for instructions in the event of failure to cover: an undertaking from the natural or legal person that in the event that executed short sales are not covered by purchases in the same day, the natural or legal person will promptly send an instruction to the third party to procure the shares to cover the short sale to ensure settlement in due time.
- 4. Easy to borrow or purchase arrangements and measures shall mean arrangements, confirmations and measures when the natural or legal person enters into a short sale of shares that meet the liquidity requirements established in Article 22 of Commission Regulation (EC) No 1287/2006 Article 1 of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, or other shares that are included in the main national equity index as identified by the relevant competent authority of each Member State FCA and are the underlying financial instrument for a derivative contract admitted to trading on a trading venue, that include the following elements:
 - (a) for locate confirmations: a confirmation provided by the third party prior to the short sale being entered into that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions and indicating the period for which the share is located;

- (b) for easy to borrow or purchase confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that the share is easy to borrow or purchase in the relevant quantity taking into account the market conditions and other information available to that third party on the supply of the shares, or in the absence of this confirmation by the third party, that it has at least put on hold the requested number of shares for the natural or legal person; and
- (c) for instructions to cover: when executed short sales will not be covered by purchases or borrowing, a undertaking that a prompt instruction will be sent by the natural or legal person instructing the third party to procure the shares to cover the short sale to ensure settlement in due time.
- 5. The arrangements, confirmations and instructions referred to in paragraphs 2, 3 and 4 shall be provided in a durable medium by the third party to the natural or legal person as evidence of the existence of the arrangements, confirmations and instructions.

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Article 8

Third parties with whom arrangements are made

- 1. Where an arrangement referred to in Articles 6 and 7 is made with a third party, the third party shall be one of the following types:
 - (a) in the case of an investment firm: an investment firm which meets the requirements set out in paragraph 2;
 - (b) in the case of a central counterparty: a central counterparty which clears the relevant shares or sovereign debt;
 - (c) in the case of a securities settlement system: a securities settlement system as defined under Directive 98/26/EC of the European Parliament and of the Council the Financial Markets and Insolvency (Settlement Finality)

 Regulations 1999 which settles payments in respect of the relevant shares or sovereign debt;
 - (d) in the case of a central bank: a central bank that accepts the relevant shares or sovereign debt as collateral or conducts open market or repo transactions in relation to the relevant shares or sovereign debt;
 - (e) in the case of a national debt management entity: the national debt management entity of the relevant sovereign debt issuer;
 - (f) any other person who is subject to authorisation or registration requirements in accordance with Union law by a member of the European System of Financial Supervision the Financial Services and Markets Act 2000 and meets the requirements set out in paragraph 2;
 - (g) a person established in a third country who is authorised or registered, and is subject to supervision by an authority in that third country and who meets the requirements set out in paragraph 2, provided that the third country authority

is a party to an appropriate cooperation arrangement concerning exchange of information with the relevant competent authority FCA.

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CHAPTER V

DETERMINATION OF THE PRINCIPAL TRADING VENUE FOR THE EXEMPTION

[ARTICLE 16 OF REGULATION (EU) No 236/2012]

Article 9

Date and period for principal trading venue calculations

- 1. Relevant competent authorities The FCA shall make any calculations determining the principal trading venue for a share by at least 35 calendar days before the date of application of Regulation (EU) No 236/2012 exit day in respect of the period between 1 January 2010 and 31 December 2011 two-year period preceding that date.
- 2. Subsequent calculations shall be made before 22 February 2014 in respect of the period between 1 January 2012 and 31 December 2013, and every two years thereafter in respect of the subsequent two year period.
- 3. Where the share concerned was not admitted to trading during the whole two-year period on the trading venue in the <u>Union UK</u> and the third country trading venue, the period for calculation shall be the period during which the share was admitted to trading on both venues concurrently.

Article 10

Date of notification to ESMA

Relevant competent authorities shall notify ESMA of those shares for which the principal trading venue is outside the Union at least 35 calendar days before the date of application of the Regulation (EU) No 236/2012 and thereafter on the day before the first trading day in March every second year commencing from March 2014.

Article 11

Effectiveness of the list of exempted shares

The list of shares for which the principal trading venue is located outside the <u>Union UK</u> shall be effective as of 1 April following its publication by <u>ESMA</u> the <u>FCA</u>, except that the first list published by <u>ESMA</u> the <u>FCA</u> shall be effective from the date of entry into application of <u>Regulation (EU) No 236/2012</u> exit day.

Specific cases of review of exempted shares

- 1. A relevant competent authority which determines The FCA, in determining whether the principal trading venue for a share is located outside the Union the UK following one of the circumstances set out in paragraph 2 shall ensure that:
 - (a) any calculations determining the principal trading venue are made as soon as possible after the relevant circumstances arise and in respect of the two year period preceding the date of calculation.
 - (b) it notifies ESMA of its determination as soon as possible and, where relevant, before the date of admission to trading on a trading venue in the Union.

Any revised list shall be effective from the day following that of its publication by ESMA.

- 2. The provisions of paragraph 1 apply when:
 - (a) the shares of a company are removed from trading on a permanent basis on the principal venue located outside the Union UK;
 - (b) the shares of a company are removed from trading on a permanent basis on a trading venue in the Union UK;
 - (c) the shares of a company that was previously admitted to trading in a trading venue outside the Union UK are admitted to trading on a trading venue in the Union UK.

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

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ANNEX II

Format of the information to be provided to ESMA on quarterly basis (Article 3)

Information	Format
1. Issuer identification	For shares: full name of the company that has shares admitted to trading on a trading venue
	For sovereign debt: full name of the issuer
	For uncovered sovereign credit default swaps: full name of the underlying sovereign issuer
2. ISIN	For shares only: ISIN of the main class of ordinary shares of the issuer. If there are no ordinary shares admitted to trading, the ISIN of the class of preference shares (or of the main class of preference shares admitted to trading if there are several classes of such shares)
3. Country code	Two letter code for the sovereign issuer country in accordance with ISO standard 3166-1
4. Position date	Date for which the position is reported. Format in accordance with ISO standard 8601:2004 (yyyy mm dd)
5. Daily aggregated net short position on main national index shares	Percentage figure rounded to 2 decimal places
6. End of quarter aggregated net short position on other shares	Percentage figure rounded to 2 decimal places
7. Daily aggregated net short positions in sovereign debt	Figure of equivalent nominal amount in Euros
8. Daily aggregated uncovered positions on credit default swaps of a sovereign issuer	Figure of equivalent nominal amount in Euros

Annex C

COMMISSION DELEGATED REGULATION (EU) No 919/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments

(Text with EEA relevance)

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Article 1

Subject matter

- 1. This Regulation specifies the method of calculation of the 10% fall in value for liquid shares traded on a trading venue as set out in Article 23(5) of Regulation (EU) No 236/2012.
- 2. That method of calculation shall exclude any downward movement of a price resulting exclusively from a split or any corporate action or similar measures adopted by the issuer on its issued share capital which can result in an adjustment of the price by the relevant trading venue.

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Article 3

Method of calculation of a significant fall in value for other non-derivative financial instruments

1. A significant fall in value for financial instruments other than shares and not falling into the categories of derivatives listed in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC Part 1 of Schedule 2 to the Regulated Activities Order 2001 shall be calculated according to the method in paragraphs 2, 3 and 4.

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Method of calculation of a significant fall in value for derivatives

A significant fall in value for financial instruments falling under the categories of derivatives listed in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC Part 1 of Schedule 2 to the Regulated Activities Order 2001 and which have a sole underlying financial instrument that is traded on a trading venue and for which a significant fall in value has been specified in accordance with Article 2 or Article 3, shall be calculated by reference to the significant fall in value of the underlying financial instrument.

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

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