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COVID-19: UK FINANCIAL CONDUCT AUTHORITY'S SHORT SELLING NOTIFICATION THRESHOLDS AMENDED

To Our Clients and Friends:

The UK Financial Conduct Authority (“FCA”) has made clarifications to its previous announcement on 16 March regarding the European Securities and Markets Authority’s (“ESMA’s”) decision concerning temporary amendments to short selling notification thresholds under the Short Selling Regulation (“SSR”). The FCA will now be ready to receive notifications at the lower threshold from 6 April 2020.

This client alert provides firms holding net short positions with an overview of the FCA’s new notification thresholds in light of the coronavirus outbreak.

What did the ESMA decision say?

The SSR requires holders of net short positions in shares trades on a European Union (“EU”) regulated market to notify notifying national competent authorities of their position.

ESMA published a decision on 16 March 2020 that it was temporarily amending the threshold of net short positions under the SSR from 0.2% of issued share capital to 0.1%. The decision applies until 16 June 2020.

ESMA stated that lowering the reporting threshold was a precautionary action that was essential for authorities to monitor developments in markets during the ongoing coronavirus outbreak.

What did the FCA’s statement on 17 March 2020 say?

The FCA confirmed that it would apply ESMA’s decision in the UK. However, the FCA noted that this would require changes to its technology to receive the data at the new threshold. The FCA stated that firms should continue to reporting in compliance with the existing thresholds until further notice.

When do the new notification thresholds apply?

On 31 March 2020, the FCA confirmed that it has made the required changes to its systems and will be ready to receive notifications at the lower threshold.

Firms must comply with the new thresholds from **Monday 6 April 2020**. However, firms are not required to amend and resubmit notifications submitted to the FCA between 16 March 2020 and 3 April 2020.

In line with the SSR, the new reporting obligation will apply to shares for which the FCA is the relevant competent authority and not to exempted shares where the principal venue for the trading of the shares is located outside of the EU.

What if a firm's systems are unable to report at the new threshold?

The FCA states that firms should make best efforts to report at the lower threshold from 6 April 2020. However, the FCA appreciates that it may not be possible for some firms to amend their systems by this date. If a firm is unable to report at the new thresholds by 6 April 2020, they must contact PMU@fca.org.uk to discuss the matter further.



Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 pandemic. For additional information, please contact any member of the firm's Coronavirus (COVID-19) Response Team.

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