

DRAFT STATUTORY INSTRUMENTS

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**2024 No.**

**FINANCIAL SERVICES AND MARKETS**

**The Short Selling Regulations 2024**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

The Treasury make the following Regulations in exercise of the powers conferred by sections 71K, 71N and 428(3) of the Financial Services and Markets Act 2000 and sections 4, 83(1) and (2) and 84(2) of the Financial Services and Markets Act 2023.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with section[s] 71S(2) [and 429(2A)] of the Financial Services and Markets Act 2000 and sections 4(9) and 84(3) of the Financial Services and Markets Act 2023.

**PART 1**

General Provisions

**Citation and extent**

- 1.—(1) These Regulations may be cited as the Short Selling Regulations 2024.
- (2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

**Commencement [To be inserted]**

- 2.—[]

**PART 2**

Designated Activities and FCA Rule-Making Powers

**Interpretation**

3. In these Regulations—  
“debt instrument” means a financial instrument specified in articles 77(1), 77A or 78(1) (without taking into account the exclusions provided for in articles 77(2), 77(3), 78(2) and 78(3)) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and which is admitted to trading on a UK trading venue (and includes the instrument when traded outside such a trading venue);

“financial instrument” means any instrument specified in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, read with Part 2 of that Schedule;

“issued share capital” in relation to a company means the total of ordinary and any preference shares issued by the company but does not include convertible debt securities;

“long position” has the meaning given in regulation 6(3)(c);

“net short position” has the meaning given in regulation 6(3)(a);

“overseas jurisdiction” means a country or jurisdiction other than the United Kingdom;

“share” means a financial instrument specified in article 76(1) and (2) (but without taking into account the exclusions provided for in article 76(3)) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and which is admitted to trading on a UK trading venue (and includes the instrument when traded outside such a trading venue);

“short sale” in relation to a share or debt instrument means any sale of the share or debt instrument which the seller does not own at the time of entering into the agreement to sell including such a sale where at the time of entering into the agreement to sell the seller has borrowed or agreed to borrow the share or debt instrument for delivery at settlement, but not including—

- (a) a sale by either party under a repurchase agreement where one party has agreed to sell the other a security at a specified price with a commitment from the other party to sell the security back at a later date at another specified price;
- (b) a transfer of securities under a securities lending agreement; or
- (c) entry into a futures contract or other derivative contract where it is agreed to sell securities at a specified price at a future date;

“short position” has the meaning given in regulation 6(3)(b);

“short selling regulation” means 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;

“UK trading venue” means—

- (a) a UK regulated market within the meaning of point (13A) of Article 2(1) of Regulation (EU) No 600/2014;
- (b) a UK multilateral trading facility within the meaning of point (14A) of Article 2(1) of Regulation (EU) No 600/2014.

#### **Designated activities: short selling of relevant shares and related instruments**

**4.** The following activities are specified under section 71K of the Financial Services and Markets Act 2000 as designated activities for the purposes of that Act—

- (a) entering into a short sale of a share;
- (b) entering into a transaction which creates or relates to a financial instrument other than an instrument referred to in paragraph (a), where an effect of the transaction is to confer a financial advantage on the person entering into that transaction in the event of a decrease in the price or value of a share.

#### **FCA rules relating short selling of shares and related instruments**

**5.—(1)** Subject to paragraph (3), the FCA may make designated activity rules relating to the carrying on of the activities specified in regulation 4.

(2) Designated activity rules made by virtue of this regulation may, in particular, make provision—

- (a) requiring persons carrying on an activity specified in regulation 4 to make arrangements, such as borrowing the share or entering into an enforceable agreement to borrow the share, to ensure that settlement of those transactions can be effected when due;
  - (b) about the type of agreement or arrangement that satisfies such a requirement.
- (3) The FCA may not make rules by virtue of paragraph (1) requiring a person to notify it of a net short position in the issued share capital of a company.

**FCA rules requiring notification of a significant net short position in the issued share capital of a company**

6.—(1) The FCA may make designated activity rules requiring a person, who has a net short position in the issued share capital of a company which is equal to or greater than the notification threshold, to notify the FCA.

(2) The notification threshold referred to in paragraph (1) is 0.2% of the issued share capital of the company.

(3) For the purposes of this regulation—

- (a) a person has a net short position in the issued share capital of a company if the person's short position in the issued share capital of that company exceeds the person's long position in the issued share capital of that company;
- (b) a short position in the issued share capital of a company is the position resulting from—
  - (i) a short sale of a share issued by the company;
  - (ii) entering into a transaction which creates or relates to a financial instrument other than an instrument referred to in paragraph (i), where an effect of the transaction is to confer a financial advantage on the person entering into that transaction in the event of a decrease in the price or value of a share issued by the company;
- (c) a long position in the issued share capital of a company is the position resulting from—
  - (i) holding a share issued by the company;
  - (ii) entering into a transaction which creates or relates to a financial instrument other than an instrument referred to in paragraph (i), where an effect of the transaction is to confer a financial advantage on the person entering into that transaction in the event of an increase in the price or value of a share issued by the company.

(4) Designated activity rules made by virtue of paragraph (1) may, in particular, make provision as to—

- (a) the circumstances in which a person has a net short position in the issued share capital of a company for the purpose of rules made under this regulation, including—
  - (i) provision as to the circumstances in which a person is considered to hold a share;
  - (ii) provision regarding the treatment of short or long positions held by different entities in a group or by separate funds managed by a management entity when calculating a person's net short position;
- (b) the calculation of a person's net short position, and the maintenance of records relating to that calculation;
- (c) how and when notification must be made;
- (d) the form and content of a notification;
- (e) the circumstances in which a notification is required to be re-made or updated, including for example where a person's net short position falls below the notification threshold.

**Publication by the FCA of aggregate net short positions**

7.—(1) Subject to paragraph 6, for each working day the FCA must publish the aggregate net short position in relation to the issued share capital of a company.

(2) Subject to paragraph 4, the aggregate net short position in relation to the issued share capital of a company, for the purpose of this regulation, is the sum of the net short positions in the issued share capital of the company that the FCA has been notified were held on the relevant working day, expressed as a percentage of the company's issued share capital.

(3) The FCA must publish the aggregate net short position no later than two working days after the day to which the figure relates.

(4) In calculating the aggregate net short position in relation to a company, the FCA may exclude—

- (a) a net short position notified to it in a case where it is carrying out work to verify the reliability of that notified position;
- (b) information received after the working day prior to publication.

(5) The FCA may amend and re-publish a previously published aggregate net short position to take account of notifications received, verified or amended since publication.

(6) The FCA is not required to publish the aggregate net short position in relation to a company for which it has not received any notifications of net short positions held on the relevant working day.

(7) In this regulation—

- (a) a net short position is notified to the FCA if it is notified pursuant to rules made by virtue of regulation 6, or a requirement imposed under regulation 10(1)(a);
- (b) “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

#### **FCA power to provide for exemption from rules in relation to certain shares and obligation to publish list of shares in relation to which rules apply**

**8.**—(1) Designated activity rules made by the FCA by virtue of regulations 5 and 6 may make provision as to the circumstances in which the FCA may determine that requirements imposed by those rules do not apply in relation to a share or description of shares.

(2) The FCA must publish, in the way appearing to the FCA to be best calculated to bring it to the attention of the public, and keep regularly updated a list of shares in relation to which it considers rules made by virtue of these Regulations apply, and which are not subject to an exemption provided for under paragraph (1).

#### **FCA power to exempt market making activities and stabilisation**

**9.**—(1) Designated activity rules made by the FCA by virtue of regulations 5 and 6 may provide for an exemption from those rules where—

- (a) a transaction is performed due to market making activities; or
- (b) a person enters into a short sale of a share or has a net short position in relation to the carrying out of a stabilisation.

(2) The FCA may only provide for an exemption relating to market making activities under paragraph (1)(a) in respect of the market making activities of an investment firm, credit institution, overseas entity [or relevant firm] that is a member of a UK trading venue or of a market or trading venue in an overseas jurisdiction, where the Treasury has made regulations under Part 4 in relation to that jurisdiction.

(3) The FCA may make designated activity rules relating to an exemption provided for by virtue of this regulation, including in particular provision—

- (a) supplementing paragraph (5)(c) as to what constitutes market making activities for the purposes of this regulation;
- (b) requiring any firm that intends to make use of an exemption under paragraph (1) to notify the FCA of its intention to do so;

- (c) requiring any person who has given a notification under sub-paragraph (b) to notify the FCA where there are any changes affecting that person's eligibility to use an exemption or they no longer wish to use an exemption;
- (d) requiring a person making use of an exemption provided for by virtue of paragraph (1) to provide the FCA, in writing, with information about positions held or activities conducted under the exemption;
- (e) as to the time or date by which notification or information referred to in sub-paragraphs (b) to (d) must be made, and the form and content of such a notification or information;
- (f) prohibiting or suspending the use of an exemption where the FCA considers that a person intending to use the exemption does not satisfy its conditions or a person using the exemption no longer satisfies its conditions.

(4) The FCA shall publish, in the way appearing to the FCA to be best calculated to bring it to the attention of the public, a list of persons who are using an exemption made by virtue of paragraph (1).

(5) In this regulation—

- (a) ["derivative" means a derivative referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;]
- (b) ["investment services" means the services and activities referred to in paragraphs 1, 2 and 4 to 9 of Part 3 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;]
- (c) "market making activities" means the activities of an investment firm, a credit institution, an overseas entity, [or relevant firm] where it deals as principal in a financial instrument, whether traded on or outside a trading venue or market in any of the following capacities—
  - (i) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market;
  - (ii) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade;
  - (iii) by hedging positions arising from the fulfilment of tasks under paragraphs (i) or (ii);
- (d) ["markets" means cash markets or markets in financial futures, options or other derivatives;]
- (e) "overseas entity" means a body incorporated in, or formed under the law of, any country of territory outside the United Kingdom;
- (f) ["relevant firm" means a firm which—
  - (i) provides investment services;
  - (ii) performs investment activities consisting exclusively in dealing on own account on markets for the sole purpose of hedging positions on derivatives markets; or
  - (iii) performs investment activities consisting in dealing for the accounts of other members of markets or makes prices for those members which are guaranteed by clearing members of the same markets,

where responsibility for ensuring the performance of contracts entered into by the firm is assumed by clearing members of the same markets;]

- (g) "stabilisation" means a stabilisation under Chapter III of Commission Delegated Regulation (EU) No 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measure.

## PART 3

### FCA Powers in Exceptional Circumstances

#### **FCA power to require notification of short position**

- 10.**—(1) Subject to regulation 14(1), the FCA may require any person who has—
- (a) a net short position in relation to the issued share capital of a company to notify to the FCA details of—
    - (i) the position the person holds where it is equal to or exceeds a specified threshold; and
    - (ii) any change to that position (for example, where the position falls below the specified threshold);
  - (b) entered into a short sale of a share or debt instrument to notify to the FCA details of the position the person holds as a result of that transaction; or
  - (c) entered into a transaction which creates, or relates to, a financial instrument other than an instrument referred to in sub-paragraph (b), where an effect of the transaction is to confer a financial advantage on the person in the event of a decrease in the price or value of a share or debt instrument, to notify to the FCA details of the position the person holds as a result of that transaction.
- (2) In paragraph (1) “specified” means specified in a notice published by the FCA under regulation 15.

#### **FCA power to require notification of lending fees**

**11.** Subject to regulation 14(1), the FCA may require any person engaged in the lending of a financial instrument or class of financial instruments to notify the FCA of any significant change in the fees requested for such lending.

#### **FCA power to prohibit or impose conditions on short sales**

- 12.** Subject to regulation 14(1), the FCA may prohibit or impose conditions relating to persons entering into—
- (a) a short sale of a share or debt instrument; or
  - (b) a transaction other than a short sale which creates, or relates to, a financial instrument, where an effect of that transaction is to confer a financial advantage on the person in the event of a decrease in the price or value of another financial instrument.

#### **FCA power to restrict short selling following significant price fall**

- 13.** Where, in the opinion of the FCA, the price of a financial instrument on a UK trading venue has fallen significantly during a single trading day in relation to the closing price on that venue on the previous trading day, subject to regulation 14(2), the FCA may—
- (a) where the instrument is a share or debt instrument, prohibit or restrict persons from—
    - (i) entering into a short sale of that instrument;
    - (ii) entering into a transaction other than a short sale of the instrument which creates, or relates to, a financial instrument, where an effect of the transaction is to confer a financial advantage on the person in the event of a decrease in the price or value of the share or debt instrument; or
  - (b) where the instrument is not a share or debt instrument, prohibit or restrict transactions in that financial instrument where an effect of the transaction is to confer a financial advantage on the person entering into that transaction in the event of a decrease in the price or value of that financial instrument.

### **Conditions applying to exercise of FCA power in exceptional circumstances**

**14.**—(1) The FCA may exercise a power under regulations 10(1), 11 or 12 if the FCA considers that—

- (a) there are adverse events or developments which constitute a serious threat to financial stability or to market confidence in the United Kingdom;
- (b) it is necessary to exercise the power to address the threat; and
- (c) the exercise of the power will not have a detrimental effect on the efficiency of the financial markets which is disproportionate to its benefits.

(2) The FCA may exercise a power under regulation 13 if the FCA considers that—

- (a) it is appropriate to exercise the power in order to prevent a disorderly decline in the price of the financial instrument; and
- (b) the exercise of the power will not have a detrimental effect on the efficiency of the financial markets which is disproportionate to its benefits.

(3) Subject to paragraphs (1) and (2), the FCA may exercise a power under regulations 10 to 13 in such circumstances or subject to such exceptions as specified in a notice published by the FCA under regulation 15.

### **Notice of FCA decision to exercise power in exceptional circumstances**

**15.**—(1) The FCA shall publish a notice of any decision to exercise a power under regulations 10 to 13.

(2) The notice shall specify—

- (a) the power exercised;
- (b) the measure imposed under the power, including the descriptions of financial instruments or transactions to which it relates;
- (c) the time period in relation to which the measure will be in force;
- (d) the reasons why the FCA believes it necessary to exercise the power including the evidence supporting those reasons;
- (e) the reasons why the FCA believes that the exercise of the power will not have a detrimental effect on the efficiency of financial markets which is disproportionate to its benefits; and
- (f) the threshold for notification to the FCA of a net short position under regulation 10(1)(a).

(3) A measure imposed by the FCA under regulation 10(1) shall take effect when the notice is published or at a time specified in the notice that is after publication and shall apply in relation to any position held or acquired at the time or after the measure takes effect.

(4) A measure imposed by the FCA under regulation 11 shall take effect when the notice is published or at a time specified in the notice that is after publication and shall apply in relation to any lending agreement in place at the time of or entered into after the measure takes effect.

(5) A measure imposed by the FCA under regulations 12 or 13 shall take effect when the notice is published or at a time specified in the notice that is after publication and shall apply in relation to any short sale or transaction entered into after the time the measure takes effect.

### **FCA review of powers exercised in exceptional circumstances**

**16.**—(1) Where the FCA has imposed a requirement under regulations 10(1) or 11 or imposed a prohibition or condition under regulation 12, the FCA must—

- (a) review the requirement, prohibition or condition regularly; and
- (b) withdraw the requirement, prohibition or condition if the FCA is of the view that the conditions set out in regulation 14(1) are no longer met.

(2) Where the FCA has imposed a prohibition or restriction under regulation 13, the FCA must—

- (a) review the prohibition or restriction regularly; and
- (b) withdraw the prohibition or restriction if the FCA is of the view that the conditions set out in regulation 14(2) are no longer met.

### **Statement of policy**

**17.**—(1) The FCA must prepare and issue a statement of its policy with respect to the exercise of its powers under regulations 10 to 13, including—

- (a) the factors the FCA will consider when deciding whether to exercise those powers (including the circumstances in which the FCA considers that the conditions in regulation 14 will be met);
- (b) the circumstances in which a measure imposed under the power may apply;
- (c) exceptions which may apply; and
- (d) the regular review by the FCA of a measure imposed under the power.

(2) In exercising, or deciding whether to exercise, its powers under regulations 10 to 13, the FCA must have regard to the statement of policy published under this regulation and in force at the time in question.

(3) Before the FCA issues a statement under paragraph (1) the FCA must publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

(4) The draft must be accompanied by a notice that representations about the proposed statement may be made to the FCA within a specified time.

(5) Before issuing the proposed statement the FCA must have regard to any representations made to it in accordance with paragraph (4).

(6) If the FCA issues the proposed statement it must publish an account, in general terms, of—

- (a) the representations made to it in accordance with paragraph (4); and
- (b) its response to them.

(7) If the statement differs from the draft published under paragraph (3) in a way which, in the opinion of the FCA, is significant, the FCA must (in addition to complying with paragraph (6)) publish details of the difference.

(8) The FCA may charge a reasonable fee for providing a person with a copy of a draft published by it under paragraph (3).

(9) This regulation also applies to a proposal to revise a statement unless the FCA considers that the proposed revision is of a minor nature.

(10) The FCA must, without delay, give the Treasury a copy of any statement which it publishes under this regulation.

## **PART 4**

### **Overseas regime**

#### **Overseas regime [To be inserted]**

**18.** [ ]

#### **Transitional and saving provision in respect of the Short Selling Regulation Equivalence Directions 2020 [To be inserted]**

**19.** [ ]



**PART 5**

Enforcement

*[See accompanying policy note]*

**PART 6**

Buy-in procedures

*[Provision regarding Article 15 of the SSR].*

**PART 7**

Consequential Amendments *[To be inserted]*

**20.**—(1) *[Part 8A of FSMA 2000].*

(2) *[Other amendments]*

Date

Two of the Lords Commissioners of His Majesty's Treasury

*name*

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*