

**COMMISSION de SURVEILLANCE  
du SECTEUR FINANCIER**

Luxembourg, 30 October 2012

To natural or legal persons domiciled  
or established within the European  
Union or in a third country

<p><b>CIRCULAR CSSF 12/548</b> as amended by Circulars CSSF 13/565 and CSSF 22/798</p>
--

**Re: Entry into force of 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 and details on certain practical aspects of notification, disclosure and exemption procedures**

Ladies and Gentlemen,

We refer to the 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 (the “**Regulation**”).

To ensure the proper functioning of the internal market and to improve the conditions of its functioning, in particular with regard to the financial markets, and to ensure a high level of consumer and investor protection, the Regulation lays down a common European regulatory framework with regard to the requirements and powers relating to short selling and credit default swaps and aims at ensuring greater coordination and consistency between Member States where measures have to be taken in exceptional circumstances.

As those rules take the legislative form of a regulation of the European Parliament and the Council, they ensure that provisions directly imposing obligations on private parties to notify and disclose, as applicable, significant net short or uncovered positions relating to certain instruments are applied in a uniform manner throughout the Union. In addition, in order to reduce risks relating to certain categories of uncovered short selling, the Regulation is introducing a proportionate restrictions regime on uncovered short selling. Moreover, the Regulation confers powers on the European Securities and Markets Authority (**ESMA**) established by Regulation (EU) No 1095/2010 of the European

Parliament and of the Council to coordinate measures taken by competent authorities or to take measures itself.

The scope of the Regulation is as broad as possible to provide for a preventive regulatory framework to be used in exceptional circumstances with a proportionate response to the risks that short selling of different instruments could represent. It is therefore only in the case of exceptional circumstances that competent authorities and ESMA will be entitled to take measures concerning all types of financial instruments, going beyond the permanent measures that only apply to particular types of instruments where there are clearly identified risks that need to be addressed.

The transparency regime set up by the Regulation applies regardless of where the natural or legal person is located, including in a third country, where that person has a significant net short position relating to the issued share capital of a company that has shares admitted to trading on a trading venue in the Union (provided the principal venue is not located in a third country) or a significant net short position in relation to sovereign debt issued by a Member State or by the Union, including the European Investment Bank, a Member State's government department, agency, special purpose vehicle or international financial institution established by two or more Member States that issues debt on behalf of a Member State or on behalf of several Member States, such as the European Financial Stability Facility or the European Stability Mechanism.

To ensure consistent application of the Regulation, the European Commission has adopted a package of four implementing measures specifying technical aspects of certain key issues of the Regulation:

- 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 (“**Commission Delegated Regulation (EU) No 826/2012**”);
- 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;
- Commission Delegated Regulation (EU) No 918/2012 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 definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events (“**Commission Delegated Regulation (EU) No 918/2012**”);

- 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.

The European legislative framework on short selling and certain aspects of credit default swaps (i.e. the Regulation and the above four implementing measures) **fully applies from 1 November 2012, it is binding in its entirety and directly applicable in Luxembourg,**

Taking into account the Regulation, the decisions of the CSSF published on 19 and 29 September 2008 in relation to the prohibition of uncovered (“naked”) short selling in publicly quoted banks and insurance companies are repealed as from 1 November 2012.

The present circular aims at providing practical details and guidance as regards certain aspects in relation to i) the notification or disclosure of significant net short positions to the CSSF in accordance with Articles 5 to 9 of the Regulation, ii) the exemption for market making activities and primary market operations under Article 17 of the Regulation and iii) the publication, by ESMA and by the CSSF, of relevant information in relation to the application of the Regulation.

## **1. Transparency relating to significant net short positions**

Section 1 of this circular gives further details and clarification concerning the application of the provisions of Articles 5 to 9 on notification and disclosure of significant net short positions in relation to the issued share capital of a company and in relation to issued sovereign debt and on notification of uncovered positions in sovereign credit default swaps. The present section specifies in particular the notification on significant net short positions that must be submitted to the CSSF (being the relevant competent authority within the meaning of Article 2(1)(j) of the Regulation), the persons subject to the notification and disclosure requirements, the time limit for such notification and disclosure, the content of said notifications as well as the method of notification and disclosure.

### **a. Relevant competent authority in Luxembourg for receiving notifications of positions in relation to the issued share capital of a company**

In accordance with Article 5(1) of the Regulation, a natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted

to trading on a trading venue shall notify the relevant competent authority, in accordance with Article 9, where the position reaches or falls below a relevant notification threshold which is 0.1% of the issued share capital of the company concerned and each 0.1% above that.

Pursuant to Article 6(1) of the Regulation, a natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue shall disclose details of that position to the public, in accordance with Article 9, where the position reaches or falls below a relevant publication threshold which is 0.5% of the issued share capital of the company concerned and each 0.1% above that.

The CSSF is the relevant competent authority for receiving the notifications of significant net short positions in relation to the issued share capital of a company, where the CSSF is the competent authority of the most relevant market in terms of liquidity (as defined in Chapter III of the Commission Regulation (EC) No 1287/2006) for the relevant shares concerned and where such shares are admitted to trading on a trading venue i.e. on a regulated market or a multilateral trading facility (MTF) within the meaning of Directive 2004/39/EC.

The CSSF publishes on the Short selling page of its website (<http://www.cssf.lu>) a complete list of issuers of shares in relation to which net short position notifications and disclosures pursuant to the Regulation are required to be made to the CSSF. Said list excludes shares that have been identified by the CSSF (being the relevant competent authority for such shares under the Regulation) as having their principal trading venue located in a third country. Indeed, pursuant to Article 16(1) of the Regulation, its Articles 5, 6, 12 and 15 shall not apply to shares of a company admitted to trading on a trading venue in the Union, where the principal venue for the trading of the shares is located in a third country.

**b. Relevant competent authority in Luxembourg for receiving notifications of significant net short positions in relation to issued sovereign debt and uncovered positions in sovereign credit default swaps**

Pursuant to Article 7(1) of the Regulation, a natural or legal person who has a net short position relating to issued sovereign debt shall notify the relevant competent authority, in accordance with Article 9 of the Regulation, where such a position reaches or falls below the relevant notification thresholds for the sovereign issuer concerned. The relevant notification thresholds consist of an initial amount and then additional incremental levels in relation to each sovereign issuer.

ESMA publishes on its website (<http://www.esma.europa.eu/page/Short-selling>) the notification thresholds for each sovereign issuer.

In accordance with Article 8 of the Regulation, where a competent authority suspends restrictions applicable to sovereign credit default swap transactions pursuant Article 14(2)

of the Regulation, a natural or legal person who has an uncovered position in a sovereign credit default swap shall notify the relevant competent authority where such a position reaches or falls below the relevant notification thresholds for the sovereign issuer, as specified in accordance with Article 7 of the Regulation.

In relation to sovereign debt issued by a sovereign issuer as defined by the Regulation, the CSSF is the relevant competent authority for receiving the notifications in relation to the sovereign debt issued by the Grand-Duchy of Luxembourg as well as those in relation to the sovereign debt issued by the European Investment Bank, the European Financial Stability Facility and the European Stability Mechanism.

The CSSF publishes on the Short selling page of its website (<http://www.cssf.lu>) a list of the sovereign debt issuers in relation to which it is the relevant competent authority for the purposes of the Regulation.

### **c. Persons subject to the notification and disclosure requirements**

It is important to point out that pursuant to Article 10 of the Regulation, the notification and disclosure requirements under Articles 5, 6, 7 and 8 apply to natural or legal persons domiciled or established within the Union or in a third country.

References in the Regulation to natural and legal persons shall include registered business associations without legal personality.

### **d. Time limit for notification and disclosure**

Where a natural or legal person holds a relevant position, the relevant notification or disclosure shall be made, pursuant to Article 9(2) of the Regulation, not later than at 15.30 on the following trading day (Luxembourg local time).

### **e. Method of notification and disclosure**

In accordance with Article 9(1) of the Regulation, any notification or disclosure under Article 5, 6, 7 or 8 shall set out details of the identity of the natural or legal person who holds the relevant position, the size of the relevant position, the issuer in relation to which the relevant position is held and the date on which the relevant position was created, changed or ceased to be held.

Commission Delegated Regulation (EU) No 826/2012 specifies in its Annexes I and II the information which a notification must contain as well as the format to be used in the notification forms issued by the competent authority in accordance with Article 2(1) of said delegated regulation.

A notification made to the CSSF must contain the information specified in the “List of fields for notification purposes in Luxembourg” in Annex I to this circular. The said list specifies all the elements of information a notification must include and further explains

the content required for certain fields and the common standards to be used in this respect. The notification itself must be made by using the “Format of the notification form for net short positions in Luxembourg” set out in Annex II to this circular.

The notification can be submitted to the CSSF either by the natural or legal person subject to the notification requirement (the “**position holder**”) or by a third-party that has been authorised by the position holder to notify on its behalf.

According to Article 9(3) of the Regulation, the notification of information to a relevant competent authority shall ensure the confidentiality of the information and incorporate mechanisms for authenticating the source of the notification.

To that end, the CSSF has developed a web-based platform for the notification and disclosure of net short or uncovered positions pursuant to the Regulation (the “**short selling platform**”). The platform is made available at <http://shortselling.cssf.lu>.

In order to obtain authorised access to submit notifications on net short or uncovered positions on the said short selling platform, the natural or legal persons concerned must first have successfully registered on the platform as a reporting person for the notification procedure with respect to net short or uncovered positions. In the registration process, the CSSF requires from the persons concerned information and documentation as regards the identity of the position holder and the reporting person (if different). Fields 1 to 7 of the “List of fields for notification purposes in Luxembourg” in Annex I to this circular set out the elements of information to be provided. The authentication documents to be provided are, depending whether the relevant persons are natural or legal persons, a copy of a valid official ID containing a photo and satisfying the passport and ID requirements in Luxembourg (e.g. passport, ID card) or a copy of an extract from the commercial register or comparable official register or list. Such documents will not be required where the persons concerned are subject to the prudential supervision of the CSSF. In addition, where the reporting person is different from the position holder, the CSSF will require a letter of confirmation of the position holder authorising the reporting person to fulfil the notification or disclosure requirements pursuant to the Regulation on behalf of the position holder. On completion of the authentication process, the reporting person obtains a user name and a password authorising it to file notifications on the short selling platform of the CSSF.

The notification forms for net short positions in relation to the issued share capital of a company that has shares admitted to trading on a trading venue, net short positions relating to issued sovereign debt and uncovered positions in sovereign credit default swaps (set out in Annex II to this circular) which shall be used for the notifications to the CSSF will be made available to the authorised reporting persons on the short selling platform. These persons will be able to directly fill in, on the short selling platform, the details of the net short or uncovered positions and submit the duly completed forms to the CSSF through the short selling platform. The forms are considered duly completed by the CSSF where they contain all the relevant information requested by the “List of fields for notification purposes in Luxembourg” set out in Annex I to this circular.

The CSSF insists that where pursuant to Article 6(1) of the Regulation, a natural or legal person who has a net short position in relation to the issued share capital of a company that has shares admitted to trading on a trading venue discloses details of that position to the public, the relevant field “Public disclosure requirement” (in the notification form) triggering a publication through the systems of the CSSF must be duly completed. In fact, according to the Regulation, the obligation to disclose details of its position to the public is the responsibility of the natural or legal person who has a net short position. Where the relevant field is duly completed, the CSSF will automatically disclose the relevant information on such net short positions in relation to the issued share capital of a company that has shares admitted to trading on a trading venue to the public by posting it on the Publications page of its short selling platform and considers that the relevant person has fulfilled its obligation to disclose the details of its position to the public.

Finally, in accordance with Article 2(3) of Commission Delegated Regulation (EU) No 826/2012, a natural or legal person who has submitted a notification which contains an error shall proceed, upon becoming aware of the error, to a cancellation of the erroneous notification on the short selling platform and where applicable, make sure that a public disclosure will be made through the short selling platform by using the same procedure as in the aforementioned paragraph. The natural or legal person concerned shall submit a new notification on the short selling platform, if necessary.

The CSSF will publish on the Short selling page of its website (<http://www.cssf.lu>) the detailed registration, notification and disclosure procedures.

## **2. Exemption for market making activities and primary market operations and ESMA guidelines in this respect**

Section 2 of this circular details the application of the provisions of Article 17 of the Regulation on exemption for market making activities and primary market operations. The present section specifies notably the scope of the exemption, the notifications of intent to make use of an exemption (a “**notification of intent**”) which must be submitted to the CSSF (where it is the relevant competent authority), the information and documentation to be included in a notification of intent to the CSSF as well as the exemption process and the notification channel.

On 2 April 2013, ESMA published guidelines on the exemption for market making activities and primary market operations under Article 17 of the Regulation (Ref. ESMA/2013/74), entitled “Guidelines - Exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps” (the “**Guidelines**”).

The Guidelines, which are annexed to this circular as Annex VI, provide further details and clarification on:

- the scope of the exemption for market making activities, including the required link between the relevant financial instrument, the trading venue or “equivalent” third country market and the market membership of the notifying entity;
- the definition of the relevant competent authority for notification, in particular for notifying entities from third countries;
- the process of notification of the intent to use the exemption and its content, including common templates for notification;
- the approach to processing the notification received by the relevant competent authority and the standards that the competent authority should take into account when assessing the eligibility of the notifying entity’s activities for the exemption, and;
- the monitoring of the conditions of eligibility once the exemption is used.

The natural or legal persons concerned, who give to the CSSF a notification of intent to make use of the exemption for market making activities or authorised primary dealers activities in accordance with Article 17 of the Regulation, must comply with the Guidelines. They shall refer in particular to the details set out in Sections V, VI and VII of the Guidelines, in relation to the definition and scope of the exemption for market making activities, the general principles and qualifying criteria of eligibility for the exemption for market making activities, and the determination of the competent authority that should be notified by a third country entity not authorised in the Union.

#### **a. Definition and scope of the exemption**

##### **o Exemption for market making activities**

Pursuant to Article 17(1) of the Regulation, Articles 5, 6, 7, 12, 13 and 14 shall not apply to transactions performed due to market making activities.

According to Article 2(1)(k) of the Regulation, “market making activities” means the activities of an investment firm, a credit institution, a third-country entity, or a firm as referred to in point (l) of Article 2(1) of Directive 2004/39/EC, which is a member of a trading venue or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the European Commission pursuant to Article 17(2) of the Regulation where it deals as principal in a financial instrument, whether traded on or outside a trading venue, 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 points (i) and (ii).

Article 17(1) of the Regulation therefore exempts certain entities, when they are undertaking transactions due to market making activities as defined above, from net short



position notification and disclosure requirements and the restrictions on uncovered short sales. The exemption applies only to the transactions carried out in performance of market making activities as defined in Article 2(1)(k) of the Regulation.

- **Exemption for authorised primary dealers activities**

Pursuant to Article 17(3) of the Regulation, Articles 7, 13 and 14 of the Regulation shall not apply to the activities of a natural or legal person where, acting as an authorised primary dealer pursuant to an agreement with a sovereign issuer, it is dealing as principal in a financial instrument in relation to primary or secondary market operations relating to the sovereign debt.

Article 2(1)(n) of the Regulation defines “authorised primary dealer” as a natural or legal person who has signed an agreement with a sovereign issuer or who has been formally recognised as a primary dealer by or on behalf of a sovereign issuer and who, in accordance with that agreement or recognition, has committed to dealing as principal in connection with primary and secondary market operations relating to debt issued by that issuer.

Under Article 17(3) of the Regulation, persons exempted as authorised primary dealers as defined in Article 2(1)(n) are therefore not required to notify net short positions relating to issued sovereign debt, are not subject to the restriction on uncovered short sales in sovereign debt and are not prohibited to enter into an uncovered sovereign credit default swap transaction. The exemption applies only to activities carried out in performance of authorised primary dealers activities as defined in Article 2(1)(n).

- b. Relevant competent authority for the notification of intent**

- **Persons domiciled in the EU**

- Exemption for market making activities:

A notification with respect to the exemption referred to in Article 17(1) of the Regulation must be made by the natural or legal person concerned to the competent authority of its home Member State. According to the definition set out in Article 2(1)(i) of the Regulation, the persons concerned who shall file their notification of intent to the CSSF are:

- investment firms as defined in Article 1(9) of the Luxembourg law of 5 April 1993 on the financial sector;
- credit institutions as defined in Article 1(12) of the Luxembourg law of 5 April 1993 on the financial sector;
- firms as referred to in point (l) of Article 2(1) of Directive 2004/39/EC where they have their registered office, their head office or their domicile in Luxembourg.

- Exemption for authorised primary dealers activities:

A notification with respect to the exemption referred to in Article 17(3) of the Regulation is made by the authorised primary dealer to the relevant competent authority in relation to the sovereign debt concerned. Accordingly, the CSSF is the relevant competent authority (as defined in Article 2(1)(j) of the Regulation) for receiving the notifications of intent in relation to the sovereign debt issued by the Grand-Duchy of Luxembourg, the European Investment Bank, the European Financial Stability Facility and the European Stability Mechanism.

- **Persons domiciled outside the EU**

- Exemption for market making activities and for authorised primary dealers activities:  
Pursuant to Article 17(8) of the Regulation, a third-country entity that is not authorised in the Union shall send the relevant notification referred to in paragraphs 5 and 6 of the said Article to the competent authority of the main trading venue in the Union in which it trades. Accordingly, where the main trading venue in the Union is the regulated market or the MTF operated by the Société de la Bourse de Luxembourg S.A., the CSSF is the relevant competent authority for receiving the notification of intent of the third-country entity concerned.

- c. Notification 30 calendar days in advance and exemption process**

Pursuant to Article 17(5) and 17(6) of the Regulation, the exemption shall apply only where the natural or legal person concerned has notified the CSSF in writing that it intends to make use of the exemption. The notification of intent must be made not less than 30 calendar days before the natural or legal person first intends to use the exemption.

Pursuant to Article 17(7) of the Regulation, the CSSF may prohibit the use of the exemption if it considers that the natural or legal person does not satisfy the conditions of the exemption. Any prohibition shall be imposed within the 30 calendar day period referred to above or subsequently if the CSSF becomes aware that there have been changes in the circumstances of the natural or legal person so that it no longer satisfies the conditions of the exemption. The 30 calendar day period commences once a complete notification of intent including all relevant information and documentation as specified in point 2(d) below has been submitted to the CSSF.

The exemption process does not constitute an authorisation or licensing process.

It should be noted that when processing a notification of intent and assessing whether a natural or legal person concerned satisfies the conditions of the exemption for market making activities or authorised primary dealers activities, the CSSF will take into account the Guidelines issued by ESMA in relation to the requirements of Article 17 of the Regulation.

Where the CSSF does not object to the use of the exemption, it will inform the person concerned accordingly in writing.

Where the CSSF decides to prohibit the use of the exemption, considering that the natural or legal person concerned does not satisfy or no longer satisfies the conditions of the exemption, it will justify its decision and inform the person concerned thereof in writing.

In accordance with Article 17(9) and 17(10) of the Regulation, a natural or legal person who has given a notification of intent shall as soon as possible notify in writing the CSSF where there are any changes affecting that person's eligibility to use the exemption, or if it no longer wishes to use the exemption.

#### **d. Content of the notification of intent**

A notification of intent and the accompanying documents may be provided to the CSSF in Luxembourgish, French, German or English.

In conformity with the Guidelines, a notification of intent shall be submitted to the CSSF in accordance with the template form provided in Annex III (Exemption for authorised primary dealers activities) and in Annexes IV and V (Exemption for market making activities) of this circular. Such notification of intent shall in particular include all the information and documentation detailed below:

- Exemption for authorised primary dealers activities:
  - Details of the notifying party;
  - Details of the contact person within the notifying party;
  - Copy of the agreement/recognition signed with a sovereign issuer or a person acting on its behalf.
  
- Exemption for market making activities:
  - Details of the notifying party;
  - Details of the contact person within the notifying party;
  - Status of the notifying party (credit institution, investment firm...);
  - Trading venue of which the notifying person is a member;
  - Description of the market making activities specifying particular capacity according to Article 2(1)(k) of the Regulation:
    1. Capacity under Article 2(1)(k)(i);
    2. Capacity under Article 2(1)(k)(ii) and the nature of client facilitation services:
      - a. Fulfilling orders initiated by clients;
      - b. Responding to clients' requests to trade.
  - For each capacity, the financial instrument(s) for which the intent to use the exemption is notified. It can take the form of a list of individual financial instruments or a clear specification of the instruments concerned (e.g. national equity index on a particular date), provided that it results in a closed list of

- specific instruments and allows the notified competent authority to unambiguously identify all individual instruments for which the exemption is declared;
- In case of existing contractual agreement for provision of market making services, a description of the main duties and activities under the contract or a copy of the contract;
  - Where the market making activities are carried out on instruments referred to in paragraph 30<sup>1</sup> of Section V of the Guidelines, e.g. exchange-traded funds: the corresponding category of financial instruments according to Part 1 and 2 of Annex I of Commission Delegated Regulation (EU) No 918/2012, e.g. category: shares/units of exchange-traded funds;
  - Where no previous market making activity in a particular financial instrument can be demonstrated (e.g. IPO, intention to start a new market making business in a new financial instrument):
    1. For market making activities under Article 2(1)(k)(i) capacity: indication of expected daily volumes of market making activities in a financial instrument;
    2. For market making activities under Article 2(1)(k)(ii) capacity: indication of expected weekly volumes of market making activities in a financial instrument.

#### **e. Notification channel**

The complete, dated and signed notification of intent must be sent

by mail to: Commission de Surveillance du Secteur Financier  
Department Supervision of securities markets  
110, route d'Arlon  
L-2991 Luxembourg

or, alternatively, by e-mail to: [shortselling@cssf.lu](mailto:shortselling@cssf.lu).

### **3. Information published by ESMA**

The European Securities and Markets Authority (ESMA) publishes on its website (<http://www.esma.europa.eu/page/Short-selling>) further information and clarification as regards the practical application of the European legislative short selling framework. The persons concerned shall in particular take into consideration the ESMA Questions and

---

<sup>1</sup> “If market making activities are carried out in a financial instrument, different from a share or a sovereign debt instrument, that creates long or short positions as defined in Articles 3 and 4 of the Regulation, the notification should specify the category of financial instrument according to Part 1 and 2 of Annex I of the Commission Delegated Regulation (EU) No 918/2012 and the corresponding share or issuer of the sovereign debt. Importantly, activities in the corresponding share or sovereign debt will be exempted only to the extent they are undertaken for the purpose of hedging market making activities in that financial instrument, pursuant to point (iii) of Article 2(1)(k) of the Regulation.”

Answers (Q&A) document on Implementation of the Regulation on short selling and certain aspects of credit default swaps (as it may be revised, when appropriate), as well as any guidelines or rules already adopted or which may be adopted in the future by ESMA in relation to the requirements under the Regulation.

According to the provisions of the Regulation, ESMA shall provide for public access to certain types of information, such as: significant net short position notification thresholds for each sovereign issuer (Article 7(2)); links to central websites operated or supervised by competent authorities where the public disclosure of net short positions is posted (Article 9(4)); the list of shares for which the principal trading venue is located in a third country (Article 16(2)) and a list of market makers and authorised primary dealers (Article 17(3)).

#### **4. Information published by the CSSF**


Apart from information disclosed and made available as described under other sections of this circular, the CSSF publishes on the Short selling page of its website <http://www.cssf.lu> all relevant information and documentation concerning the legislative and regulatory framework on short selling and certain aspects of credit default swaps in Luxembourg. The CSSF will also make public on said page notices of any decision to impose or renew any measure that it takes under the provisions of the Regulation, including any notification, publication and restrictions measures which may be adopted under exceptional circumstances.

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER



Claude SIMON  
Directeur



Andrée BILLON  
Directeur



Simone DELCOURT  
Directeur



Jean GUILL  
Directeur général

## ANNEX I

### List of fields for notification purposes in Luxembourg

Field identifier	Description
1. Position holder	For natural persons: the first name and the last name For legal persons: full name including legal form as provided for in the register where it is incorporated, if applicable
2. Legal person identification code	Bank Identifier Code, if available
3. Address of the position holder	Full address (e.g. street, street number, postal code, city, state/province) and country
4. Contact details of the position holder	Telephone number, fax number (if available), email address
5. Reporting person	For natural persons: the first name and the last name For legal persons: full name including legal form as provided for in the register where it is incorporated, if applicable
6. Address of the reporting person	Full address (e.g. street, street number, postal code, city, state/province) and country, when different from the position holder
7. Contact details of the reporting person	Telephone number, fax number (if available), email address, when different from the position holder
8. Reporting date	Date on which the notification is submitted in accordance with ISO standard 8601:2004 (yyyy-mm-dd)
9. 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
10. 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)
11. Country code	Two letter code for the sovereign issuer country in accordance with ISO standard 3166-1
12. Position date	Date on which the position was created, changed or ceased to be held. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)
13. Net short position size in percentage	For shares only: percentage (rounded to 2 decimal places) of the issued share capital, expressed in absolute terms, with no "+" or "-" signs
14. Net short position equivalent amount	For shares: total number of equivalent shares For sovereign debt: equivalent nominal amount in Euros For uncovered sovereign credit default swaps: equivalent nominal amount in Euros Figures expressed in absolute terms, with no "+" or "-" signs and the currency expressed in accordance with ISO standard 4217
15. Date of the previous notification	Date on which the last position reported by the position holder in relation to the same issuer was notified. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)
16. Cancellation date	Date on which a cancellation form is submitted to cancel an erroneous notification previously submitted. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)
17. Comments	Free text – optional
18. Public disclosure requirement	For shares only: Check box. Details of the net short position shall be disclosed to the public pursuant to Article 6 of Regulation (EU) No 236/2012.

## ANNEX II

### Format of notification form for net short positions in Luxembourg

POSITION HOLDER	First name LAST NAME Full company name		
	BIC code (if the holder has one)		
	Country		
	Address		
	Contact person	First name Last name	
		Phone number	
		Fax number	
	E-mail address		

REPORTING PERSON (if different)	First name LAST NAME Full company name		
	Country		
	Address		
	Contact person	First name Last name	
		Phone number	
		Fax number	
		E-mail address	

#### NET SHORT POSITION IN RELATION TO THE ISSUED SHARE CAPITAL OF A COMPANY THAT HAS SHARES ADMITTED TO TRADING ON A TRADING VENUE

1. Reporting date (yyyy-mm-dd)	
2. Name of the issuer	
2.1. ISIN code	
2.2. Full name	
3. Position date (yyyy-mm-dd)	
4. Net short position after threshold crossing	
4.1. Number of equivalent shares	

4.2. % of issued share capital	
5. Date of previous notification (yyyy-mm-dd)	
6. Comment	
7. Public disclosure requirement	Yes/No

---

NET SHORT POSITION RELATING TO ISSUED SOVEREIGN DEBT

1. Reporting date (yyyy-mm-dd)	
2. Name of the issuer	
2.1. Country code	
2.2. Full name	
3. Position date (yyyy-mm-dd)	
4. Net short position after threshold crossing Equivalent nominal amount	
5. Date of previous notification (yyyy-mm-dd)	
6. Comment	

---

UNCOVERED POSITION IN A SOVEREIGN CREDIT DEFAULT SWAP

1. Reporting date (yyyy-mm-dd)	
2. Name of the issuer	
2.1. Country code	
2.2. Full name	
3. Position date (yyyy-mm-dd)	
4. Net short position after threshold crossing Equivalent nominal amount	
5. Date of previous notification (yyyy-mm-dd)	
6. Comment	



**ANNEX III**

**Notification of intent to make use of the exemption under Article 17(3) of 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**

<b>1</b>	<b>Details of NOTIFYING PARTY</b>	
a)	First name LAST NAME Full company name	
b)	BIC code (if the holder has one)	
c)	Country	
d)	Address	
<b>2</b>	<b>Contact person</b>	
a)	First name Last name	
b)	Phone number	
c)	Fax number	
d)	E-mail address	
<b>3</b>	<b>Financial Instrument</b>	
	Description of sovereign issuer(s)	

Date, signature \_\_\_\_\_

**IMPORTANT:**

This notification form is only valid if submitted together with a copy of the agreement/recognition signed with a sovereign issuer or a person acting on its behalf

## ANNEX IV

### **Notification of intent to make use of the exemption under Article 17(1) of 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**

<b>1</b>	<b>Details of NOTIFYING PARTY</b>	
a)	First name LAST NAME Full company name	
b)	BIC code (if the holder has one)	
c)	Country	
d)	Address	
<b>2</b>	<b>Contact person</b>	
a)	First name Last name	
b)	Phone number	
c)	Fax number	
d)	E-mail address	

<b>3</b>	<b>Details of Market Making</b>	
a)	STATUS OF THE NOTIFYING PARTY (credit institution, investment firm, third-country entity or firm as defined in Article 2(1)(1) of Directive 2004/39/EC)	
b)	MARKET MEMBERSHIP (trading venue(s) where membership exists)	
c)	DETAILED DESCRIPTION OF ACTIVITIES ACCORDING TO ARTICLE 2(1)(k) or INDICATION OF EXPECTED ACTIVITIES ACCORDING TO ARTICLE 2(1)(k)	
d)	FINANCIAL INSTRUMENT(S) (provide information in the specific spreadsheet in Annex V)	
	(i) INSTRUMENT (share, sovereign issuer of debt instrument, CDS)	
	(ii) CATEGORY OF INSTRUMENT on which market making activities are conducted, only when different from (i) (by designation of the financial instrument/ underlying)	
e)	DESCRIPTION OF CONTRACTUAL AGREEMENT (main duties and activities)	

Date, signature \_\_\_\_\_

## ANNEX V

**Format of the spreadsheet to use together with the form for the notification of intent to make use of exemption under Article 17(1) of 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**

**Name of the informing CA**

**Name of the notifying person**

**ID code\* (e.g. BIC):**

\*please specify what code is provided if not BIC

**For shares**

No	ISIN	Name of the issuer	Market Membership
1			
2			
...			

**For sovereign bonds**

No	Name of the sovereign issuer	Market Membership
1		
2		
...		

**For sovereign CDS**

No	Name of the sovereign issuer	Market Membership
1		
2		
...		

**For instruments other than shares, sovereign debt instruments or sovereign CDS that create short or long position**

No	Category (Part 1 and 2, Annex I of Commission Delegated Regulation (EU) No 918/2012)	Underlying financial instrument
1		
2		
...		

## **ANNEX VI**

Guidelines - Exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps, Ref. ESMA/2013/74