

Corporate & Financial Weekly Digest

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European Council Adopts Short Selling Regulation

On February 21, the Council of the European Union announced the adoption of the Regulation on Short Selling and Certain Aspects of Credit Default Swaps. The version of the Regulation adopted by the Council is substantially the same as the version adopted by the European Parliament in November 2011.

The Regulation establishes a two-tier disclosure regime for shares of companies listed on an EU market. Up to a lower threshold, non-public notification of short positions to the relevant regulator is required. Above a higher threshold, positions must be publicly disclosed to the market. Reportable net short positions relating to EU sovereign debt issuers at all levels are subject only to non-public disclosure to regulators. The proposed regime also provides for (non-public) notification of significant positions in credit default swaps relating to EU sovereign debt issuers.

The Regulation effectively prohibits naked short sales by providing that at the time of the relevant short sale transaction the market participant entering into the transaction must have either borrowed the relevant instruments, entered into an agreement to borrow them or made other appropriate locate arrangements. These restrictions do not apply where the transaction serves to hedge a pre-existing long position.

National regulators may impose restrictions on short selling in certain market emergency situations. In such cases the Regulation gives the European Securities and Markets Authority (ESMA) a coordination role designed to ensure consistency among national regulators.

The Regulation will come into force on the day after it is published in the Official Journal and will apply from November 1, 2012.

For more information, click [here](#).