

Market Notice

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JSE perspective on 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 (“EU short-selling regulation”) and its application in South Africa

JSE market participants may or may not be aware that the EU has passed a regulation introducing reporting requirements for net short positions in (amongst other things) shares admitted to trading in the EU.

The regulation requires all “persons” (as defined) who hold net short positions above a certain threshold to either report these positions to the relevant regulator and/or disclose them publicly (depending on the size of the net short position). The reporting requirement purports to apply to not only EU persons, but all persons who have net short positions in shares admitted to trading in the EU even if the short positions are effected through trading venues outside the EU. Thus, in effect, the regulation seems to require that anyone with a net short position in a share admitted to trading in a venue in the EU (where the EU venue is the primary trading venue for those shares) is required to report their position to the “competent authority” in the EU. It further seems that this attempt at extra-territorial application is deliberate as the regulation states explicitly that the notification and other requirements apply “to natural or legal persons domiciled or established within the Union **or in a third country**” [emphasis added]. This regulation came into effect on 1 November 2012.

The JSE does not believe that the regulation as currently written can apply to South African participants as regards their net short positions on the JSE, even if these positions are in shares admitted to trading in the EU. We are aware that certain market participants will be reporting to the relevant authority in the EU on their SA-based net short positions but this is context specific (e.g. there is some legal association with an EU-based entity). Thus, while we do not see this regulation as having broad application in the SA market, we encourage market participants to take their own legal advice on the matter relating to their specific group structures and operations.

Please feel free to contact us if you have any questions.

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