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## Client and Market Notifications

*Of particular interest to: portfolio managers*

In the light of the current vicissitudes of the market, firms involved in portfolio management will need to bear in mind the '10% rule' arising under MiFID and set out in COBS 16A.4.3.

This requires a firm providing portfolio management to **inform the client** where the overall value of the portfolio **depreciates by 10%** and thereafter in **multiples** of 10%. Such notification is to be made by no later than the end of the business day in which the threshold is exceeded. For the avoidance of doubt, this requirement refers to 'client' and does not differentiate between a retail client or a professional client.

ESMA has produced some Q&As (Chapter 8) to assist firms in complying with this requirement (see 'Useful Links').

At the time of this Alert, market movements have prompted various national competent authorities (e.g. Italy's Consob) to introduce bans on short-selling of various stocks. As this could be a daily changing situation we would advise any firm considering a **short sale** – or even increasing an existing short position – to review the relevant markets before doing so to ensure that it will not be in breach of a prohibition.

As a result of the COVID-19 situation, ESMA issued a decision on the 16<sup>th</sup> March 2020 "temporarily requiring holders of **net short positions** in shares traded on a EU regulated market to notify the relevant national competent authority (NCA) if the position reaches or exceeds **0.1%** of the issued share capital after the entry into force of the decision." The measure applies immediately and requires net short position holders to notify NCAs of their relevant positions as at the close of the trading session on Monday 16 March 2020. The link to ESMA's public

statement can be found below.

Finally we would take this opportunity to remind firms that the annual ‘top five’ execution venues report will need to be made public. The requirement to publish such reports – the format etc. of which are set out in Regulation 2017/576 (**RTS 28**) – applies to both firms that execute orders (COBS 11.2A.39) and to firms that place orders with other firms to execute (COBS 11.2A.34(6)). Although no final date for publication is specified in RTS 28 the ESMA Q&As (Chapter 1) advise that “ESMA considers it suitable that the reports should be made public on or before the 30th of April following the end of the period to which the report relates”.

## Useful Links

[COBS 16A](#)

[ESMA Q&As on MiFID II and MiFIR investor protection and intermediaries topics](#)

[ESMA Public Statement - net short position holders](#)

[RTS 28 \(Regulation 2017/576\)](#)

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