

Reassessing Public Disclosure of Short Positions in Europe

The EU's public disclosure regime for short positions was introduced to promote transparency and strengthen market oversight. As the European Commission advances its efforts to deepen capital markets, policymakers may wish to consider whether the current disclosure framework remains appropriately calibrated to achieve these objectives including market efficiency and competitiveness.

This paper reviews evidence regarding the effects of mandatory public disclosure of short positions. It examines whether such requirements may affect price discovery and market liquidity, as well as investment behaviour including risk management, and whether these effects are consistent with the broader goals of well-functioning capital markets.

The Role of Short Selling in Capital Markets

Short selling is an established investment and risk management technique used by institutional investors, investment managers, and market makers and has long been associated with improved price discovery, enhanced liquidity, and the correction of pricing inefficiencies.¹ It supports portfolio hedging, relative value and market-neutral investment strategies, liquidity provision, and price discovery.

The practice is underpinned by securities lending markets, which provide an additional source of returns for long-term investors, institutional investors.

As with other investment techniques, short selling operates within a comprehensive regulatory framework that includes reporting obligations, market abuse protections, and risk management requirements. The SBAI *Alternative Investment Standards* set out industry best practices for the management of investment, liquidity, counterparty and operational risks associated with short selling and securities financing transactions.²

The policy question considered in this paper is not whether short selling should be regulated, but whether the current EU public disclosure regime strikes the appropriate balance between transparency, regulatory oversight, and efficient market functioning.

In the European Union, short positions reaching 0.1% of issued share capital must be reported to national regulators, while positions reaching 0.5% must also be disclosed publicly. By contrast, neither the United States nor the United Kingdom publicly identify individual holders of short positions (see Appendix B).

This divergence raises an important question: does public disclosure deliver sufficient benefits to justify its potential effects on investment behaviour and market functioning?

Negative Impacts on Institutional Investors and Investment Managers

Public disclosure requirements can influence the behaviour of both institutional investors and investment managers. By requiring the publication of significant short positions, the regime may affect how investors

¹ "The effects of short-selling public disclosure regimes on equity markets: A comparative analysis of US and European markets", Oliver Wyman (2010), access: [NYC-JEY00111-001](#)

² *Standards*, Standards Board for Alternative Investment (SBAI), access: <https://www.sbai.org/standards.html>

establish, size, and manage positions, particularly where disclosure reveals investment views or trading activity to the broader market.

For investment managers, public disclosure may reduce the value of proprietary research by requiring market participants to disclose positions that have been developed through independent analysis and investment expertise. The possibility of public disclosure may also incentivise short sellers to limit positions below the disclosure threshold, which can affect the implementation of certain investment and hedging strategies. Where short positions are used for hedging or portfolio construction purposes, this may constrain the efficient implementation of risk management strategies.

For institutional investors, the implications extend beyond the disclosure of individual positions, which may be executed for risk management purposes. As securities lending supports short-selling activity, any reduction in demand to establish or maintain short positions may ultimately reduce these revenues.

Public disclosure may also increase the visibility of short positions to other market participants, potentially exposing investors and investment managers to copycat trading, position crowding, or short squeezes. Additionally, unlike confidential regulatory reporting, public disclosure can lead to media scrutiny, public commentary, and increased focus on the investor rather than the underlying investment thesis.

Negative Impacts on Markets and End Investors

If public disclosure discourages informed short-selling activity, the costs are borne not only by managers but by the wider market and end investors.

Short sellers undertake fundamental analysis, forensic accounting, industry research, and quantitative modelling to identify securities they believe may be overvalued. In several high-profile cases, including Wirecard, short sellers identified concerns before they became widely recognised by the market. Academic research has similarly found that short selling and negative activism can serve as an important disciplinary mechanism within financial markets.³

These benefits extend far beyond short sellers themselves, to pension funds, insurers, endowments, sovereign wealth funds, passive investment vehicles, and retail investors rely. The quality of price formation in public markets also influences private markets, where public market equivalents are frequently used as reference points for investment decisions and asset valuations.

Any assessment of the public disclosure regime should therefore consider not only its transparency benefits, but also its implications for market functioning and end investors.

Recommendations

To ensure that the short selling regime continues to support both effective regulatory oversight and capital markets, the European Commission should consider the following reforms:

- Review the case for retaining public disclosure of individual short positions
- Review whether the current disclosure thresholds remain appropriately calibrated
- Align the EU framework more closely with other major jurisdictions, including the United Kingdom, which is moving towards a regulator-only disclosure model

³ “*The Long-Term Effects of Short Selling and Negative Activism*”, Partnoy & Molk (2021), access: <https://corpgov.law.harvard.edu/2021/03/26/the-long-term-effects-of-short-selling-and-negative-activism/>

Appendix A: Additional Evidence on Short Position Disclosure Regimes

1.1 Short Sale Position and Transaction Reporting (U.S. SEC)⁴

In a study mandated by the Dodd-Frank Act, the SEC examined the costs and benefits of real-time short position reporting, including both public reporting and reporting solely to the SEC and FINRA.

Key findings include:

- Public reporting could facilitate copycat and order anticipation strategies that may discourage liquidity provision, fundamental analysis, and hedging activities
- Public reporting affect market quality and capital formation
- The SEC concluded that the potential net effects of a public reporting requirement on market quality and capital formation were unclear
- Ultimately, the SEC did not support real time public reporting regime



1.2 Flying Under the Radar: The Effects of Short-Sale Disclosure Rules on Investor Behavior and Stock Price (Jank, Rolling, and Smajlbegovic)⁵

An empirical study examining the EU's mandatory short selling disclosure regime.

Key findings include:

- Some investors actively avoided crossing public disclosure threshold
- The investors most likely to avoid disclosure appeared to be among the most informed market participants
- As informed investors reduced short selling activity, price discovery became less efficient
- The authors concluded that the disclosure regime-imposed costs on the informational efficiency of stock prices and market quality



1.3 Market Impact of Short Sale Position Disclosures (Copenhagen Economics)⁶

Copenhagen Economics examined the market impact of public short position disclosure requirements.

The report concluded that public disclosure may impair price discovery through two principal channels.

- Deterring informed investors from establishing short positions; and
- Encouraging herding behaviour, potentially contributing to exaggerated price movements and increased volatility



⁴ "Short Sale Position and Transaction Reporting", Division of Economic and Risk Analysis of the U.S. Securities & Exchange Commission (2014), access: <https://www.sec.gov/files/short-sale-position-and-transaction-reporting0.pdf>

⁵ "Flying Under the Radar: The Effects of Short-Sale Disclosure Rules on Investor Behavior and Stock Price", Jank, Rolling, and Smajlbegovic (2019), access: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2806886

⁶ "Market Impact of Short Sale Position Disclosures", Copenhagen Economics (2021), access: <https://copenhageneconomics.com/publication/market-impact-of-short-sale-position-disclosures/>

Appendix B: International Regulatory Approaches

United Kingdom⁷

In 2023, HM Treasury announced its intention to replace attributed public disclosure of individual short positions with an aggregated and anonymised disclosure framework as part of broader work to reform the UK Short Selling Regulation.

The FCA's subsequent consultation noted that the current regime should be modified to alleviate disproportionate burdens that may discourage short selling and its associated benefits.

Key reforms include:

- Public disclosure of individual short positions being replaced by aggregated and anonymised disclosure
- Private reporting threshold increased from 0.1% to 0.2%
- From July 2026, the publication of aggregate net short positions (ANSPs) by company reported at or above the 0.2% threshold without identifying individual position holders

United States⁸

In October 2023, the SEC adopted a short position reporting framework requiring certain institutional investment managers to report significant short positions and related activity data to the SEC.

The framework is based on regulatory reporting and the publication of aggregated market-level data rather than the public disclosure of individual investors' positions.

Key features include:

- Reporting of gross short positions where the monthly average daily position is at least \$10 million or 2.5% of shares outstanding
- Publication of aggregated and anonymised market-level data on an approximately one-month delayed basis
- No public attribution of individual investors' or managers' short positions
- The SEC considered, but did not adopt, a regime requiring public disclosure of individual short positions

⁷ PS26/5: *Changes to the UK Short Selling Regime*, FCA (2026), access: <https://www.fca.org.uk/publications/policy-statements/ps26-5-changes-uk-short-selling-regime>

⁸ Release No. 34-104303, Securities and Exchange Commission (2025), access: <https://www.sec.gov/files/rules/exorders/2025/34-104303.pdf>