FREQUENTLY ASKED QUESTIONS ON THE TEMPORARY BAN ON NET SHORT POSITIONS ON LISTED STOCKS

This is a series of responses by the staff in the General Markets Directorate to questions on the interpretation of the ban adopted by the CNMV on the 23rd of July, 2012. This list of FAQs may be updated and extended. Please consult the latest version available at anytime on the CNMV´s website.

23rd July 2012

1. Who is subject to the prohibition?

The prohibition applies to any natural or legal person (hereinafter “investor”), irrespective of their country of residence, with the exception of the persons exempted (if any), regardless of whether trading takes place in Spain or in another country, or on a regulated market or not.

2. Could you clarify the meaning of person?

Reference to persons means any natural and legal person and should include registered business associations without legal personality.

3. To which issuers does the prohibition apply?

The prohibition applies only to the issuers of shares referred to in the temporary ban decision adopted by the CNMV on the 23rd of July, 2012.

4. What does the investor need to check before entering into a transaction in a financial instrument related to a stock covered by the prohibition?

The investor must make sure that the intended transaction in the intended quantity does not create or increase their net short position. Special care must be taken when dealing in derivatives since positions shall be accounted on a delta-adjusted basis

5. Are intraday net short positions allowed?

Creating or increasing a net short position (whatever the type of transactions used) during the trading day is prohibited, even if the investor intends to close the position before close of business on that day.

6. What is meant by a “net short position”

The position remaining after deducting any long position that a natural or legal person holds in relation to the issued share capital from any short position that natural or legal person holds in relation to that capital shall be considered a net short position in relation to the issued share capital of the company concerned where the resulting position confers a financial advantage on the natural or legal person in the event of a decrease in the price or the value of the share subject to the prohibition.

For the purposes of this prohibition, investors must take account of all financial instruments relating to the relevant issuers, that result in an exposure, whether direct or indirect, to the equity share capital of the relevant issuers. For the purpose of this temporary prohibition, convertible bonds shall also be taken into account like any other derivative instrument.

Fixed income instruments or instruments that give an exposure to the creditworthiness of one of the relevant issuers (such as CDS), should not to be taken into account.

By means of illustration, positions stemming from the following transactions, among others, shall be considered:

- purchases or sales of shares, GDRs and similar certificates representing shares, warrants;
- transactions on options, swaps, futures, contracts for difference (CFD), turbos;
- baskets of financial instruments, ETFs or indexes that, at least in part, contain shares of relevant issuers.

Where appropriate, position shall be calculated on a delta-adjusted basis (cash position having delta 1). Delta indicates how much a financial instrument's theoretical value would move in case of an underlying instrument's price variation. In order to calculate the delta of a derivative, investors shall take into account the current implied volatility of the derivative and the closing price (or last price) of the underlying instrument. Therefore, in order to determine a position having equity or cash investments and derivatives at the same time, investors shall calculate the individual delta adjusted position of every derivative that is held in the portfolio, plus or minus all cash positions.

Investors should be aware that a nominal cash short position might not be offset in some cases by an equivalent nominal long position taken in derivatives. Delta-adjusted long positions in derivatives may not compensate identical nominal short positions taken in other financial instruments due to the delta adjustment. Persons entering into derivatives contracts which might create or increase a net short position should monitor net position changes in their portfolio arising from changes in the delta.

Borrowed or lent securities are not included in the calculation of the position. In particular, securities lending transactions whereby shares are lent should not be considered as creating a short position for the lender and the borrower cannot include the borrowed shares in its long position.

7. What should be done by an investor who opened a net short position before the entry into force of the prohibition (specify date and time)?

The prohibition only refers to building or increasing a net short position. Therefore, the investor (not exempted) who opened a net short position before the entry into force of the prohibition can reduce or keep it. Without prejudice to the answer to question 9, keeping a previous net short position unaltered does not infringe the prohibition.

In case an investor placed an order that is not executed when the prohibition has entered into force but, if executed, will create or increase a net short position, the investor must cancel that order.

8. Does the prohibition apply to transactions in the concerned financial instruments conducted on MTFs outside Spain?

The prohibition applies regardless of the trading venue where the transaction is executed if it results in creating or increasing a net short position in the concerned issuer. Therefore, it applies to transactions carried out on a regulated market or MTF outside Spain. Similarly the prohibition applies to OTC transactions.

9. Does the prohibition mean that a certain product cannot be sold or offered during the effect of the prohibition?

The ban does not prohibit any specific product, nor does it mean that a certain product cannot be offered to clients. In other words, the investor holding an investment position is the one who is prohibited from increasing or creating a net short position and the one who holds the responsibility in case of non-compliance.

10. Is an investor allowed to create a net short position in one of the stocks concerned by using derivatives? What precautions should be taken with respect to derivatives?

Investors are not allowed to use derivatives to create a net short position; they may only use derivatives to hedge, create or extend a net long position.

Net short positions taken before the entry into force of the prohibition through derivatives are not affected. Investors must nonetheless reduce their exposure before the end of the day if their net short position increases as a result of the variation in delta.

Investors holding a net short position in a given issuer through expiring derivatives are allowed to roll forward their position, even if such a rolling results in the creation of a net short position with a further expiry date, provided that the net short position so created does not exceed the one held previously.

The prohibition also covers structured products that contain derivatives which effect is to create a net short position in the relevant stock. The responsibility to calculate and control this exposure lies on the investor.

11. Are trades in index derivatives that contain one or more of the stocks covered by the prohibition allowed?

Investors exposed to the equity market are allowed to hedge their general market risk by trading in index derivatives. In this context, the CNMV accepts the marginal net short position in relation to each of the securities concerned that may result from such trading in index derivatives.

However, trading in index derivatives for any purpose other than hedging general market risk is not allowed unless the resulting net short positions in each of the securities concerned are offset by long positions on the same securities. In particular, taking or increasing a net short position in one or more of the securities concerned by combining index derivative transactions and other transactions is prohibited. For instance, it is prohibited to implement a strategy consisting in:

- selling futures contracts on an index whose underlying basket includes one or more of the securities concerned, and

- buying cash or through derivatives (futures contracts on all/[most of] the securities) the securities included in the underlying basket of the index except for the concerned securities.

It is up to each investor to be able to prove that decisions taken through index derivatives are not a way to enter into short strategies over specific stock affected by the prohibition.

12. Is an investor allowed to buy shares/units of a fund which replicate the reverse return of an index that that contains one or more of the stocks covered by the prohibition?

The investor has to make sure that any investment in a fund that replicates the reverse return of an index whose basket includes one or more of the securities concerned does not result in the increase of their net short position in relation to each of the securities concerned.

Investors that are exposed to the equity market are allowed to hedge their general market risk by investing in funds replicating the reverse return of an index whose basket includes one or more of the securities concerned. In this case, the CNMV accepts the marginal net short position in relation to each of the securities concerned that may result from the investments in such funds. Investing in such funds for any purpose other than hedging general market risk is not allowed unless the resulting net short position in relation to each of the securities concerned are offset by long positions on the same securities. It is up to each investor to be able to prove that decisions taken through such funds are not a way to enter into short strategies over specific stock affected by the prohibition.

Finally, in the case a fund is to replicate, pursuant to its investment policy as defined in fund rules, instrument of incorporation or selling document, the reverse return of an index whose basket includes one or more of the securities concerned, the increase of a net short position in relation to each of the securities concerned is not considered as a breach of the prohibition on the part of the fund's manager.

13. When has the prohibition come into force and for how long will it apply?

The prohibition come into force at 14:28:00 CET on the 23rd of July 2012 and will be effective during the next 3 months until the closing of the session of the next 23rd of October 2012 inclusive, and could be renewed or lifted as needed.

14. Enforcement – What would be the consequences of non-compliance with the prohibition?

The non-compliance with the prohibition constitutes a breach of letter j of article 85.2 of the Spanish Securities Markets Act (SMA) that in turn is defined as a very serious infringement under article 99.z quinquies of the SMA.

15. Are market members considered market makers because they hold a regular membership or participant contract with the market?

No. We consider as a definition for market maker the following: An investment firm (or equivalent third-country entity), that is a member of a regulated market or an MTF (or equivalent third-country market), that deals as principal in the relevant share and/or related derivatives (whether OTC or exchange-traded), in either or both of the following capacities:

i. by posting firm, simultaneous two-way quotations 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, to fulfil orders initiated by clients or in response to clients' requests to trade, and to hedge positions arising out of those dealings.

Therefore, the relevant criteria is threefold: that the firm acts as principal, is a member of the market and operates at least in one of the two ways described above. The fact that a contract is mentioned in the CNMV agreement is because we do not require to have a market making contract (i.e one that contains commitments to quote by the market maker vis-a-vis the market operator or the issuer) to be classified as market maker.

In any case, the mere market membership contract does not entail firms to consider themselves as market makers when trading as principal if they do not act in one of the two capacities described above.

16. Is it necessary an explicit approval from the CNMV to make use of an exemption of the ban on short selling as market maker?

Yes it is. A market maker who wants to make use of the exemption of the ban on short selling must make a prior notification to the Secondary Markets Department of the CNMV informing the issuers upon which it would like to be exempted from the short selling ban as well as the facts that support the exemption. The application must be submitted through the Official Registry of the CNMV including an exhaustive description of the reasons and circumstances that support the application and any detailed activity performed in any of the individual stocks included in the application. An explicit approval from the CNMV is needed to make use of the exemption. It is expected that a market maker will not hold significant short positions other than for brief periods.