

CNMV STATEMENT IN RELATION TO THE ESMA GUIDELINES ON EXEMPTION FOR MARKET MAKING ACTIVITIES AND FOR PRIMARY DEALERS AUTHORISED UNDER REGULATION (EU) NO. 236/2012 ON SHORT SELLING.

26 December 2018

In April 2013, the Spanish National Securities Market Commission (CNMV) announced the adoption of the Guidelines approved by the European Securities and Markets Authority (ESMA) on market making activities and authorised primary dealers under Regulation (EU) No. 236/2012 on short selling and certain aspects of credit default swaps ("the Guidelines").

The Guidelines were adopted on the basis that they would allow the process for notification of the use of the exemption for market making activities to be harmonised at European level by providing a harmonised notification model and establishing a harmonised system for assessment of the conditions for applying for the exemption.

The competent authorities of Germany, the United Kingdom, Sweden and Denmark decided at the time not to adopt some of the points of the Guidelines. Their decision was taken mainly due to the fact that it followed that the scope of the exemption for market making activities could not be extended to trading in financial derivative instruments traded exclusively outside trading venues ("market making activity for instruments only traded OTC"). For its part, the French competent authority announced that, in order to avoid distortion of competition affecting its markets and/or industry, it had also decided not to apply the guidelines until there was convergence in this respect at European level.

In December 2017, ESMA published the technical advice to the European Commission on the assessment of certain elements of the short selling regulation, following the European Commission's announcement that it would review the legal text. This advice, which took into account the responses received from the industry in the context of a public consultation, analysed the exemption for market making activities and the definition of market making activities.

In relation to this issue and for the purposes of the technical advice, ESMA proposed not imposing the requirement to be a member of a trading venue in order to also apply the exemption to over-the-counter (OTC) market making activities.

The proposed reform of the Short Selling Regulation, for which ESMA's advice was requested, has not yet been presented by the European Commission and, given the legislative timetable of the European Parliament, its processing and adoption may be significantly delayed.

In view of the above, in particular the technical advice provided by ESMA and the position of the European Commission, together with the objective of preserving the competitiveness of our markets and entities, CNMV has agreed to cease applying the Guidelines exclusively to those aspects requiring market making activities to be confined to instruments admitted to trading on a trading venue. CNMV has duly informed ESMA of this.

Consequently, entities that wish to use the exemption for market making activities under Article 17 of Regulation (EU) No. 236/2012 on short selling and certain aspects of credit default swaps may also apply for exemption without restriction in relation to financial instruments not admitted on a trading venue provided that they notify CNMV accordingly.