

## FREQUENTLY ASKED QUESTIONS ON THE TEMPORARY BAN ON SHORT SALES AND NET SHORT POSITIONS RELATED TO THE STOCKS OF LIBERBANK, S.A.

This is a series of responses by the staff in the General Markets Directorate to questions on the interpretation of the ban published by CNMV on 12 June 2017. In any event, it is recalled that the regulation on short sales is set out in Regulation (EU) No. 236/2012 of the European Parliament and of the Council, of 14 March 2012, on short sales and certain aspects of credit default swaps (Regulation (EU) No. 236/2012) and other implementing regulations.

This list of FAQs may be updated and extended.

**12 June 2017**

### **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 or outside a trading venue (OTC).

### **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 Liberbank, S.A., as established in the Decision published by CNMV on 12 June 2017.

### **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 involve a short sale of Liberbank, S.A. stocks or create or increase their net short position in the share capital of Liberbank, S.A. 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”?**

A short net position in relation to the issued share capital of the company concerned (in this

case of Liberbank, S.A.) shall be considered the remaining position after deduction of the short position held by a natural or legal person, as the case may be, in relation to the issued share capital of a company, the long position held by that person, if any, in relation to that share capital. The net short 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, in this case of Liberbank, S.A.

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 Liberbank, S.A., except those covered by the exceptions to the prohibition set out in question 7 below.

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;

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 in the share capital of Liberbank, S.A. should monitor net position changes in their portfolio arising from changes in the delta.

Shares borrowed in a securities lending transaction do not count as a long position for the borrower.

## **7. Which operations are exempted from the prohibition?**

As indicated in the Decision published by CNMV on 12 June 2017, the following transactions are exempted from the prohibition:

- Market making activities under the terms of Regulation (EU) No. 236/2012 (See question 15 below).
- The creation of or increase in net short positions when the investor acquiring a convertible bond has a neutral position in terms of delta between the position in the convertible bond equity and the short position that is taken to cover that equity.
- The creation of or increase in net short positions when the creation of or increase in the short position in shares is covered by an equivalent purchase in terms of the proportion of subscription rights.
- The creation of or increase in net short positions through financial derivative instruments on financial instrument indices or baskets.

**8. 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 10, 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.

**9. Does the prohibition apply to transactions conducted on MTFs outside Spain?**

The prohibition applies regardless of the trading venue where the transaction is executed if it results in a short sale of Liberbank, S.A. stocks or in the creation of or increase in a net short position in the share capital of Liberbank, S.A. Therefore, it applies to transactions carried out on a regulated market or MTF outside Spain. Similarly the prohibition applies to OTC transactions.

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

No. 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 noncompliance.

**11. What transactions can I carry out through derivative financial instruments? What precautions should be taken with respect to such instruments?**

Without prejudice to the exception referred to in question 7 in relation to derivatives on indices or baskets of financial instruments, investors are not allowed to use derivatives to create or increase 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 whose effect is to create a net short position in the share capital of Liberbank, S.A. The responsibility to calculate and control this exposure lies on the investor.

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

As indicated in question 7, the Decision published by CNMV on 12 June 2017 excludes the prohibition to create or increase short net positions through derivative financial instruments based on indices or baskets of financial instruments.

To the extent that the ETFs or exchange traded funds are investment funds whose purpose is to replicate the evolution of an index or basket of shares, the creation of or increase in net short positions through ETFs would also be excluded from the prohibition adopted by the Decision published by CNMV on 12 June 2017.

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

The prohibition come into force from 12 June, 2017, as of today, which will be effective from its publication and for a period of 1 month until 23:59 hours on 12 July, 2017, this day included, and it could be renewed or lifted if deemed necessary.

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

CNMV has adopted its prohibition Decision published on 12 June 2017 under Article 20 of Regulation (EU) No. 236/2012.

In this regard, it is recalled that Article 286 of the consolidated text of the Securities Market Law approved by Royal Legislative Decree 4/2015, of 23 October, classifies as a very serious infringement the conducting of transactions that have been prohibited or limited by CNMV under, inter alia, Article 20 of Regulation (EU) No. 236/2012.

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

No. The definition of market creation activities is set out in Article 2.1.k) of Regulation (EU) No. 236/2012.

Only those entities which have applied for the exemption for the market making activities in Liberbank, S.A. stocks are considered to be market makers in accordance with Article 17 of Regulation (EU) No. 236/2012.