

Bans on short selling in Belgium, France, Italy and Spain

On 11 and 12 August 2011, existing prohibitions on short selling were significantly expanded in Belgium, and in France, Italy and Spain new bans on short selling were introduced. In this briefing, we provide details of the developments in each of these jurisdictions and the related statement issued by the European Securities and Markets Authority (ESMA). We also set out links to relevant source material.

Belgium

The Financial Services and Markets Authority (FSMA) has modified the rules governing short selling of financial shares.

The Royal Decree of 23 September 2008 introduced measures relating to uncovered transactions (in shares or derivatives) relating to financial institutions whose shares are listed on Euronext Brussels. Those measures contained a ban on uncovered transactions ('naked shorting') and an obligation to publish any net economic short position in excess of 0.25% of the share capital of a financial institution to which those measures apply (currently: Ageas; Dexia; KBC Group; and KBC Ancora).

The FSMA has extended the notion of 'uncovered transactions' so that coverage with borrowed shares can no longer be considered as full coverage. As a result, it is no longer merely 'naked shorting' that is prohibited, but also 'covered shorting'. These changes are effective as from 12 August 2011. The FSMA has also stated that – as a consequence – it is prohibited to take a net economic short position by any means whatsoever, or to extend such a position, in respect of the shares of a financial institution referred to in the Royal Decree of 23 September 2008.

The FSMA has indicated that existing net economic short positions do not fall within the scope of this ban, but that they may not be increased. The existing disclosure requirements remain in force, including for these positions.

Links:

FSMA homepage: <http://www.fsma.be/en.aspx>

Press

release: http://www.fsma.be/en/OtherNews/Article/pres/s/div/2011-08-11_shortselling.aspx

Q&As: <http://www.fsma.be/en/Article/faqmm/FAQ1.aspx>

Key issues

Prohibitions on short selling introduced, or extended, in Belgium, France, Italy and Spain

If you would like to know more about the subjects covered in this publication or our services, please contact:

[Chris Bates](#) +44 (0)20 7006 1041

[Habib Motani](#) +44 (0)20 7006 1718

[Martin Rogers](#) +852 2826 2437

[Steven Gatti](#) +1 202 912 5095

[Paget Dare Bryan](#) +852 2826 2459

[Caroline Dawson](#) +44 20 7006 4355

[Owen Lysak](#) +44 20 7006 2904

[Andrew Woolmer](#) +44 20 7006 1245

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP, 10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

France

The *Autorité des marchés financiers*/Financial Markets Authority (AMF) has decided to place a ban on creating any net short position or increasing any existing net short position, including intraday, in the equity shares or securities giving access to the capital of certain credit institutions and insurance companies, as specified in a list published by the AMF (currently: April Group; Axa; BNP Paribas; CIC; CNP Assurances; Crédit Agricole; Euler Hermès; Natixis; Scor; and Société Générale).

The ban is stated to apply to any natural or legal person, French or foreign, regardless of whether trading takes place in France or in another country, or on a regulated market or not.

An exemption applies for financial intermediaries acting as market makers or liquidity providers when they are operating under a contract with the relevant market undertaking or with the issuer concerned, or when acting as counterparty for block trades in equities.

The ban entered into force at 10.45 p.m. on 11 August 2011 and will remain in effect for a period of 15 days. It may be extended beyond that date pursuant to the Article L. 421-16 II of the French Monetary and Financial Code.

Links:

AMF homepage: <http://www.amf-france.org/Default.asp?lang=fr>
 Press release (English): http://www.amf-france.org/documents/general/10109_1.pdf
 FAQs (English): http://www.amf-france.org/documents/general/10111_1.pdf

Italy

The *Commissione Nazionale per le Società e la Borsa* (CONSOB) has issued Resolution No. 17902 which prohibits the holding of net short positions, or the increase of existing net short positions, including intraday, in relation to the share capital of certain issuers operating in the financial markets, as identified in a list published by CONSOB (currently: Azimut Holding; Banca Carige; Banca Finnat; Banca Generali; Banca Ifis; Banca Intermobiliare; Banca Monte Paschi di Siena; Banca Popolare Emilia Romagna; Banca Popolare Etruria e Lazio; Banca Popolare Milano; Banca Popolare Sondrio; Banca Profilo; Banco di Desio e Brianza; Banco di Sardegna Rsp; Banco Popolare; Cattolica Assicurazioni; Credito Artigiano; Credito Emiliano; Credito Valtellinese; Fondiaria – Sai; Generali; Intesa Sanpaolo; Mediobanca; Mediolanum; Milano Assicurazioni; Ubi Banca; Unicredit; Unipol; and Vittoria Assicurazioni).

The ban applies to individuals and other types of legal person or entity (for example, corporates), whether Italian or foreign.

An exemption applies for activities carried out by market makers and specialists (as defined in the rules of the regulated markets organised and managed by Borsa Italiana S.p.A) acting in the exercise of their own

functions, and for intermediaries acting in the performance of a liquidity contract.

The ban is additional to the existing notification requirements in respect of net short positions set out in CONSOB's previous resolution No. 17862 issued on 10 July 2011, which remain applicable.

The restrictions imposed by resolution No. 17902 entered into force at 9.00 a.m. on 12 August 2011 and will remain in force for a period of 15 days.

Links:

CONSOB homepage: <http://www.consob.it/>
 Resolution No. 17902
 (English): <http://www.consob.it/mainen/documenti/english/resolutions/res17902.htm>
 Resolution No. 17862
 (English): <http://www.consob.it/mainen/documenti/english/resolutions/res17862.htm>
 Press release
 (English): http://www.consob.it/mainen/press_release/comunicato_20110812.htm

Spain

The *Comisión Nacional del Mercado de Valores* (National Securities Market Commission) (CNMV) has agreed to ban any legal or natural person from entering into transactions which might constitute or increase a net short position on Spanish financial stocks. The CNMV has published a list of the stocks affected by the agreement (currently: Banca Cívica, S.A.; Banco Bilbao Vizcaya Argentaria, S.A.; Banco de Sabadell, S.A.; Banco de Valencia, S.A.; Banco Español de Crédito, S.A.; Banco Pastor, S.A.; Banco Popular Español, S.A.; Banco Santander, S.A.; Bankia, S.A.; Bankinter, S.A.; Caixabank, S.A.; Caja de Ahorros del Mediterráneo; Grupo Catalana de Occidente S.A. Mapfre, S.A.; Bolsas y Mercados Españoles, S.A.; and Renta 4 Servicios de Inversión, S.A.). The ban is a temporary preventive measure with immediate effect, based on article 85.2 j of Law 24/1988, of 28 July, on Securities Markets (SMA).

The CNMV has stated that the ban affects any trade on equities or indices, including cash equities transactions, derivatives in regulated markets and OTC derivatives, that has the effect of creating a net short position or increasing an existing one, including on an intraday basis. The CNMV has indicated that 'net short position' means any position resulting in a positive economic exposure to falls in the price of the stock.

An exemption applies for positions arising from market making activities. For this purpose, the CNMV has indicated that market making covers investment firms that incur on a transitory basis (especially intraday) net short positions either as:

- a response or a hedge to a client order; or
- a result of quoting bid and ask prices in a continuous way as market members, with or

without a public commitment with the issuer or the market.

The prohibition entered into force on 11 August 2011 and will be effective for 15 days. It can be renewed if necessary.

Links:

CNMV homepage: <http://www.cnmv.es/index.htm>

Communications

page: <http://www.cnmv.es/Portal/AIDia/Comunicaciones.aspx?lang=en>

Statement issued by ESMA

In a statement issued on 11 August 2011, ESMA confirmed that over the past few weeks it has been actively monitoring the markets and exchanging information with national competent authorities on the functioning of the markets and the market infrastructure.

The decisions made by regulators in Belgium, France, Italy and Spain to introduce new, or extend existing, bans on short selling in their respective countries have been taken, says ESMA, either to restrict the benefits that can be achieved from spreading false rumours or to achieve a regulatory level playing field, given the close inter-linkage between some EU markets. ESMA indicated that these new measures have been aligned

as far as possible in the absence of a common EU legal framework in the area of short selling and given the different national legal bases on which such measures can be taken.

ESMA emphasised the requirements in the Market Abuse Directive (MAD) referring to the prohibition of the dissemination of information which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news. While acknowledging that short selling can be a valid trading strategy, ESMA takes the view that it is abusive when used in combination with spreading false market rumours.

ESMA has also published an updated table of measures taken by its Members in relation to short selling in financial markets to reflect the latest bans.

Links:

ESMA homepage: <http://www.esma.europa.eu/>

Statement: <http://www.esma.europa.eu/popup2.php?id=7699>

Table of

measures: <http://www.esma.europa.eu/popup2.php?id=7696>

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ.

www.cliffordchance.com

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571.

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications.