

Submission Date

05/02/2018

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Additional Information

Level 1 Regulation

Short Selling Regulation (SSR) Regulation (EU) No 236/2012

Topic

Uncovered short sales

Subject Matter

Shares - Covering a short sale with claims to as yet unissued shares (subscription rights, convertible bonds)

Question

Can claims to as yet unissued shares (subscription rights, convertible bonds) cover a short sale?

05-02-2018

Original language

[ESMA70-145-408 SSR Q&A, Q&A 10.6]

Claims to as yet unissued shares (subscription rights, convertible bonds) may only cover a short sale if the availability of the new shares for settlement by the arrangement is ensured when settlement is due e.g. the concerned rights or convertible bonds can be converted into shares that would be available in time for ensuring the settlement.

Rights to subscribe for new shares cannot be used to cover a short sale in accordance with Article 5(1)(e) of Commission Implementing Regulation (EU) No 827/2012 where, at the time of entering into the short sale, there is uncertainty as to whether the new shares subscribed for will be available for settlement in due time.

That would be the case at least where:

1. taking into account that the procedure for capital increase may vary in the Member States, the successful conclusion of the capital increase is not yet known and certain as it would be where the capital increase is subject to conditions (e.g. minimum level of subscriptions);
2. it is not certain that the new shares resulting from the capital increase are fungible with the existing shares sold short;
3. there is uncertainty as to whether a sufficient number of new shares will be allocated to the subscriber that undertakes the short sale of the existing shares;
4. the delivery of the new shares in accordance with the applicable national law in the context of the concerned capital increase cannot be effective before or on the date of settlement of the short sale of the existing shares.