



OPINION

Emergency measure by the Spanish CNMV under Section 1 of Chapter V of Regulation No 236/2012 on short selling and certain aspects of credit default swaps

I. Legal basis

1. According to Article 27(2) of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (the Regulation), the European Securities and Markets Authority (ESMA) shall within 24 hours of the notification having been made by a competent authority under Article 26 of the Regulation issue an opinion on whether it considers the measure or proposed measure necessary to address the exceptional circumstances.
2. ESMA's competence to deliver an opinion is based on Article 29(1) (a) of Regulation (EC) No 1095/2010 (ESMA Regulation). In accordance with Article 44(1) of the ESMA Regulation the Board of Supervisors has adopted this opinion.

II. Background

3. In accordance with Article 26 of the Regulation, the Comisión Nacional del Mercado de Valores (CNMV) notified ESMA and other competent authorities on 1 November 2012 of its intention to make use of its powers of intervention in exceptional circumstances and to introduce an emergency measure under Article 20 of the Regulation.
4. The emergency measure concerned consists of a ban on the performance, by any natural or legal person, of transactions which create a financial instrument or relates to a financial instrument where the effect or one of the effects of the transaction is to confer a financial advantage on such natural or legal person in the event of a decline in the price or value of shares listed on a Spanish official secondary market for which the CNMV is considered the competent authority for the purposes of Article 9 of Regulation (EC) No. 1287/2006.
5. It reflects a continuation of the measure introduced on 23 July 2012 under national law.
6. The proposed ban on net short positions is subject to a number of exemptions including, among others, market making activities and certain positions related to convertible bonds, stabilization activities or subscription rights. Further details on the measure and applicable exemptions can be obtained from the CNMV website.
7. The measure is expected to enter into force on 1 November 2012 at 8:30:00 hours (CET) and to be applicable until 24:00:00 (CET) on 31 January 2013.



8. The CNMV indicated that certain adverse situations or circumstances exist at present that constitute a serious threat to the financial stability of, and confidence in, the financial market in Spain. They consist of:
- a. Substantial selling pressures or unusual volatility causing significant downward spirals in any financial instrument related to any banks and other financial institutions that may result from the uncertainties surrounding the process of restructuring that the Spanish financial sector is currently undergoing;
 - b. Serious financial, monetary and budgetary problems leading to financial instability that may threaten the orderly functioning and integrity of the Spanish financial market (State's high funding costs, worsening of the macroeconomic outlook, Spanish companies' difficulties in raising funds in the capital markets);
 - c. The risk of potential further downgrades in the rating of Spain's sovereign debt and that of its financial entities, which might generate uncertainty about the solvency of the Kingdom of Spain and its financial system.

III. Opinion

9. ESMA is adopting the following opinion on the notified measure, on the basis of Article 27(2) of Regulation 236/2012 on Short selling and certain aspects of credit default swaps:

On the adverse events or developments

ESMA considers that there are adverse developments which constitute a serious threat to financial stability and to market confidence in Spain.

On the appropriateness and proportionality of the measure

ESMA considers that the measure is appropriate and proportionate to address the above-mentioned threats that persist in Spain.

On the duration of the measure

ESMA considers that the duration of the measure is justified and appreciates the CNMV's statement in its notification of intent whereby the measure may be lifted during the period of enforcement of the measure, if considered necessary.