

## OPINION

### **Renewal of emergency measure by the Italian CONSOB 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, CONSOB originally notified ESMA and other competent authorities on 27 October 2014 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 original emergency measure consisted of a ban on the creation of new net short positions, and the increase of already existing net short positions, on shares issued by Banca MPS spa (ISIN IT0004984842) and Banca Carige spa (IT0003211601). It concerned the following financial instruments: shares of Banca MPS spa and Banca Carige spa, as well as all related instruments included in the calculation of the net short position in accordance with Regulation (EU) No 236/2012 and Commission Regulation (EU) No 918/2012 of 5 July 2012, with the exception of indices-related instruments, which were not affected by the emergency measure. The concerned emergency measure applied to any person irrespective of their country of residence.
5. The ban on net short positions was subject to the exemption for market maker activities. Further details on the measure and applicable exemptions can be obtained from CONSOB website.

6. On 27 October 2014, following the issuance by ESMA of a positive opinion pursuant to Article 27 of the Regulation, Consob adopted a ban to net short positions on Banca MPS spa and Banca Carige spa shares (Consob Resolution no. 19053 of 27 October 2014) pursuant to Article 20 of the Regulation.
7. The measure entered into force on 27 October 2014 as soon as the Opinion by ESMA was published, and was applicable until 10 November 2014 close of day.
8. During the period of effectiveness of the ban, according to data available to Consob, there has been a high compliance with the restrictions. No increase in net short positions on Banca MPS and Banca Carige shares has been detected, and the rate of failed transactions on the two shares has been quite low compared to market and historical averages.
9. Nevertheless, there have been a relevant selling pressure and high volatility in both Banca MPS and Banca Carige shares.
10. To this date, the European Central Bank has not yet approved the two remedial action plans. This may create a strong uncertainty in the market.
11. In accordance with Article 26 of the Regulation, CONSOB notified ESMA and other competent authorities on 10 November 2014 of its intention to make use of its powers of intervention in exceptional circumstances and to renew the emergency measure under Article 20 of the Regulation, described in the previous paragraphs.
12. Taking into account all the above, it is expected a substantial selling pressure and unusual volatility in the price of shares issued by the two concerned Italian financial institutions. Thus, the criteria and factors indicated in letter c) of Article 24(1) of Commission Delegated Regulation (EU) No 918/2012 continue to apply.
13. The renewal of the ban on net short positions should minimise the risk of a loss of market confidence on those shares and reducing the risk of a contagion effect to other shares of the Italian banking sector.
14. To minimise any possible detrimental effect on the efficiency of the financial market, exemptions are granted to 1) market makers activities and 2) trading in index-related instruments, in the same terms as the original decision of 27 October 2014.
15. The renewed measure is expected to enter into force on 11 November 2014 as soon as the Opinion by ESMA is published, and will be applicable until 27 January 2015 close of day, at the latest. The restrictions for each of the two concerned banks can be lifted before this date, as soon as the European Central Bank communicates the approval of the remedial action plans.

### **III. Opinion**

16. 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 still adverse developments which constitute a serious threat to market confidence in the Italian credit institutions concerned.

#### ***On the appropriateness and proportionality of the measure***

ESMA considers that the measure remains appropriate and proportionate to address the above mentioned threats that persist in the Republic of Italy.

#### ***On the duration of the measure***

ESMA considers that the duration of the measure is justified and appreciates CONSOB's statement in its notification of intent whereby the measure may be lifted before its expiry date, if appropriate.