

OPINION

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) N0 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 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 concerned emergency measure consists 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 will concern 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) N0 236/2012 and Commission Regulation (EU) No 918/2012 of 5 July 2012, with the exception of indices-related instruments, which will not be affected by the emergency measure. The concerned emergency measure shall apply to any person irrespective of their country of residence.
5. The proposed ban on net short positions is subject to the exemption for market maker activities. Further details on the measure and applicable exemptions can be obtained from CONSOB website.

6. The measure is expected to enter into force on 27 October 2014 as soon as the Opinion by ESMA is published, and to be applicable until 10 November 2014 close of day.
7. CONSOB has indicated that, given the market conditions (described in the next paragraphs) and particularly high volatility, issues could arise for market confidence and for completing the remedial actions requested from the two banks concerned by the measure.
8. On Sunday 26 October 2014 the results of the Comprehensive Assessment carried out by the European Central Bank were published. The results showed significant capital shortfalls for Banca MPS spa, and Banca Carige spa. With regard to Article 24(1)(c) of Commission Delegated Regulation (EU) No 918/2012, Consob indicated that certain adverse situations or circumstances have developed in the Italian banking sector As referred to, that constitute a serious threat to the confidence in, the financial market in Italy. Banca MPS spa suffered from a shortfall of about Eur 2.1 billion, against a market capitalisation of roughly Eur 4.5 billion; and Banca Carige spa suffered from a shortfall of about Eur 813 million against a market capitalisation of roughly Eur 900 million. In assessing the relevance of the threat to market confidence in Italy, the following should be considered:
 - The combined shortfall of the two above-mentioned banks amounts to about Eur 2,9 billion, out of a total shortfall resulting from the Comprehensive Assessment of roughly Eur 9 billion. In particular, the shortfall of Banca MPS (Eur 2.1 billion) is the highest among all European banks subject to the Comprehensive Assessment;
 - The shorfalls for the two banks are much higher than expected by the market: for Banca MPS, the worse estimation amounted to a shortfall near to zero, while for Banca Carige it amounted to a shortfall of about 400 Eur million;
 - During October 2014, there have been strong selling pressure and high volatility in both Banca MPS and Banca Carige shares, together with an increase in net short positions;
 - At the opening of the trading day of Monday 27 October 2014, the first trading after the publication of the Comprehensive Assessment, Banca MPS shares dropped by about 15% and Banca Carige by about 17% in respect to the reference price of Friday 24 October 2014. This has led CONSOB to start the ESMA procedure for the adoption of a short selling ban on Banca MPS shares pursuant to Article 23 of Regulation No 236/2012;
 - Banks with a shortfall have 15 days (thus until 10 November 2014) to inform the European Central Bank of the remedial actions they intend to take. It is of the utmost importance to ensure market confidence during this 15 days period, in order to minimise the risk of a loss of market confidence on that

shares and reduce the risk of a contagion effect to other shares of the Italian banking sector. With specific regard to Banca MPS, it has to be noted that the European Commission will have to agree upon such remedial actions, given the fact the Banca MPS is still benefitting from State-aids.

9. 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 apply.
10. The proposed ban on net short positions should minimise the risk of a loss of market confidence on these shares and reducing the risk of a contagion effect to other shares of the Italian banking sector.

III. Opinion

11. 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 adverse developments which constitute a serious threat to market confidence in the Italian credit institutions concerned, have arisen.

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 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 during the period of enforcement of the measure, if appropriate.