



## OPINION

### **Emergency measure by the Greek HCMC 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 Hellenic Capital Market Commission (HCMC) 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 temporary prohibition on short selling of shares and units of Exchange Traded Funds admitted to trading on the Athens Exchange irrespective of the venue where the transaction is executed. The short selling temporary prohibition includes sales which are covered with subsequent intraday purchases. The short selling temporary prohibition applies to all depository receipts (ADRs, GDRs) representing shares admitted to trading on the Athens Exchange.
5. It reflects a continuation of the measure introduced on 24 July 2012 under the national law.
6. The proposed prohibition on short selling is subject to the exemption for market making activities. Further details on the measure and applicable exemptions can be obtained from the HCMC website.
7. The measure is expected to enter into force on 1 November 2012 at 8:30:00 hours (CET) and to be applicable till until 24:00:00 (CET) on 31 January 2013.
8. HCMC 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 Greece. They consist in:



- a. Substantial selling pressures or unusual volatility causing significant downward spirals in any financial instrument related to any banks and other financial institutions.
  - b. Serious financial, monetary or fiscal problems leading to financial instability.
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 Greece.

***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 Greece.

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

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