



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. On 1 November 2012, ESMA issued an opinion of the emergency measure introduced on that day by Hellenic Capital Market Commission (HCMC). The 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 was executed-- has been in force from 1 November 2012 and will expire on 31 January 2013.
4. In accordance with Article 26 of the Regulation, the HCMC has notified ESMA and other competent authorities on 28 January 2013 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.
5. The emergency measure concerned consists of a temporary prohibition on short selling of shares of credits institutions admitted to trading on the Athens Exchange and part of the FTS/ATHEX-CSE Banking index irrespective of the venue where the transaction is executed. The short selling temporary prohibition applies to all depository receipts (ADRs, GDRs) representing shares of the above mentioned credit institutions.
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 February 2013 at 8:30:00 hours (CET) and to be applicable until 24:00:00 (CET) on 30 April 2013.

8. HCMC indicated that certain adverse situations or circumstances persist on the Greek banking sector that constitute a serious threat to the financial stability of, and confidence in, the financial market in Greece. The necessary process of bank recapitalisation and restructuring is still on-going and fragile thus creating market uncertainties. Unusually high volatility associated with likely substantial selling pressures causing significant downward spirals in any financial instrument related to these credit institutions would jeopardise this process which is essential to the overall stabilisation of the Greek economy.
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 relating to the Greek banking sector 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 which is targeted to Greek credit institutions 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 appropriate.