

## **FREQUENTLY ASKED QUESTIONS ON THE TEMPORARY BAN ON NET SHORT POSITIONS ON SPANISH FINANCIAL STOCKS**

This is a series of responses by the staff in the General Markets Directorate to questions on the interpretation of the ban. They do not represent an official position by the CNMV nor do they modify the content of the agreement taken in August 11<sup>th</sup> 2011. This list of FAQs may be updated and extended. Please consult the latest version available at anytime on the CNMV's website.

**Version 4.0 20<sup>th</sup> September 2011**

### **1. Are market members considered market makers because they hold a regular membership or participant contract with the market?**

No. We consider as a definition for market maker the following:

*An investment firm (or equivalent third-country entity), that is a member of a regulated market or an MTF (or equivalent third-country market), that deals as principal in the relevant share and/or related derivatives (whether OTC or exchange-traded), in either or both of the following capacities:*

*i. by posting firm, simultaneous two-way quotations of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market;*

*ii. as part of its usual business, to fulfil orders initiated by clients or in response to clients' requests to trade, and to hedge positions arising out of those dealings.*

Therefore, the relevant criteria is threefold: that the firm acts as principal, is a member of the market and operates at least in one of the two ways described above. The fact that a contract is mentioned in the CNMV agreement of 11-8-11 is because we do not require to have a market making contract (i.e one that contains commitments to quote by the market maker vis-a-vis the market operator or the issuer) to be classified as market maker.

In any case, the mere market membership contract does not entail firms to consider themselves as market makers when trading as principal if they do not act in one of the two capacities described above.

### **2. Do I need to close out the short positions that I held before the ban was published?**

No. The ban only refers to building or increasing short positions. Keeping previous ones unaltered does not infringe the prohibition.

### **3. Does the ban cover trades on Spanish financial stocks concluded in MTFs outside Spain?**

Yes, if they create or increase a net short position on the relevant stocks.

### **4. Can I sell, through a derivative, an index that contains a stock covered by the ban?**

Investors exposed to the equity market are allowed to hedge their general market risk by trading in index derivatives. In this context, the CNMV accepts the marginal net short positions in the securities concerned that may result from that trading in index derivatives.

However, circumventing the ban by combining index derivative transactions and other transactions (for instance, going short on the index and long on all non-financial stocks) with the result of taking a net short position in one or more of the securities concerned is prohibited. It is up to each investor to be able to prove that decisions taken through index derivatives are not a way to enter into short strategies over specific financial stocks affected by the ban.

### **5. Can I buy a share of a reverse ETF whose investment policy is being short on the IBEX?**

Investors in funds whose investment policy is being short on the IBEX, and hence being short of affected financial stocks, should take into account all their holdings when calculating their net short position and, therefore, cannot increase it or create it through investments in these type of funds.

Fund managers with discretionary capabilities over their investment policy are not allowed to take or increase a net short position on the affected stocks while the ban is in place.

Whenever a fund replicates the inverse return of an index (like a reverse ETF) or a basket and has a public investment policy that mirrors its benchmark and therefore leaves little or no discretion to its manager in relation to the way new inflows are invested, the increase of the net short position by the fund shall not mean an infringement of the ban by the fund manager. However, the ban affects to the participants of the fund, who shall not build or increase net short positions through that type of funds.

### **6. Does the ban include a structured product that contains derivatives whose effect is to create a net short position on a relevant stock?**

Yes. The responsibility to calculate and control this exposure lies on the investor.

### **7. Does the ban mean that certain products cannot be sold or offered during the effect of the ban?**

No: the ban does not prohibit any specific product or activity, nor does it mean that a certain product cannot be offered to clients. In other words, the holder of an investment position is the one who is banned from increasing or creating a net short position and the one who holds the responsibility of complying with the measure adopted by the CNMV.

### **8. Can an investor roll-over a short position in futures, taken before the temporary short position ban agreed by the CNMV?**

Yes, provided that the roll-over of future contracts does not create a new net short position or increase a previous one.

**9. Can I compensate a long position in convertible bonds with a short position in the underlying shares?**

Yes, provided that your delta adjusted net exposure would not be negative.

**10. Is it necessary an explicit approval from the CNMV to make use of an exemption of the ban on short selling as market maker?**

Yes. A market maker who wants to make use of the exemption of the ban on short selling must make a prior notification to the Secondary Markets Department of the CNMV informing the issuers upon which it would like to be exempted from the short selling ban as well as the facts that support the exemption. The application must be submitted through the Official Registry of the CNMV including an exhaustive description of the reasons and circumstances that support the application and any detailed activity performed in any of the individual stocks included in the application. An explicit approval from the CNMV is needed to make use of the exemption. It is expected that a market maker will hold significant short positions other than for brief periods.