



## Procedure for the exercise of the CNMV's powers of intervention in short selling and certain aspects of credit default swaps<sup>1</sup> (P15)

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<sup>1</sup> 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

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## 1. APPLICABLE SCOPE

This internal procedure has been developed in accordance with the contents of Article 39 of the Internal Regulations of the National Securities Markets Commission (*Comisión Nacional del Mercado de Valores*, CNMV), and it shall apply to the exercise of the CNMV's powers of intervention in the circumstances provided for in Chapter V 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 (hereinafter, the Regulation) Such intervention shall affect the following issues:

1. Cases involving exceptional circumstances:
  - a. The notification and disclosure of information on net short positions.
  - b. The notification by persons involved in the loan of financial instruments of any significant change to the premiums demanded in order to make the said loan.
  - c. Restrictions on short selling and similar transactions.
  - d. Restrictions on sovereign credit default swap transactions.
2. In cases involving significant falls in price, the power temporarily to restrict the short selling of financial instruments.

## 2. APPLICABLE REGULATIONS

The regulations that apply to this procedure are set out in the following provisions:

- The consolidated text of Securities Markets Act (*Ley del Mercado de Valores*, TRLMV), approved by Royal Legislative Decree 4 of 23 October 2015, Article 234.9.
- 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 (hereinafter, the Regulation)
- Commission Delegated Regulation (EU) No. 918/2012 of 5 July 2012, supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council, on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events.
- Commission Delegated Regulation (EU) No. 919/2012 of 5 July 2012, supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council, on short selling and certain aspects of credit default swaps with regard to regulatory technical standards for the method of calculation of the fall in value for liquid shares and other financial instruments.
- Guidelines on exemption for market making activities and primary market operations under Regulation (EU) No. 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps (02.04.2013).

This present procedure shall automatically incorporate any directive or recommendation issued by the European Security and Markets Authority (ESMA), pursuant to Article 16 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council, of 24 November 2010, which established a European Supervisory Authority, provided that the

CNMV has confirmed its compliance or its intention to comply under the terms of paragraph 3 of the aforementioned Article.

The following provisions also apply to this procedure:

- Act 30 of 26 November 1992, on the Legal Regulations Governing Public Authorities and Common Administrative Procedure<sup>2</sup>.
- The Agreement of 11 March 2015 by the Board of the National Securities Markets Commission, on the delegation of powers.
- The Resolution adopted on 16 November 2011 by the National Securities Markets Commission, creating and regulating the CNMV's Digital Register.

### **3. DEPARTMENT WITH COMPETENCE**

The processing of the files referred to in this internal procedure shall be the responsibility of the Department of Secondary Markets, belonging to the General Markets Division.

### **4. REQUIREMENTS FOR INTERVENTION BY THE CNMV**

The CNMV may make use of the powers of intervention referred to in this Procedure when the following requirements are met:

1. As regards the cases listed in section 1.1, when:
  - a. Adverse events or circumstances have arisen that represent a serious threat to financial stability or confidence in the Spanish markets, and
  - b. The measure is necessary in order to deal with the threat, and this will not have a prejudicial effect on the efficacy of the financial markets that is disproportionate in respect of the advantages obtained.
2. When the CNMV is not the authority with competence over the financial instrument being affected, it must obtain the consent of the competent authority, in addition to meeting the requirements of the preceding point 1.
3. In order temporarily to prohibit or restrict the short selling of financial instruments, as referred to in section 1.2 of this present Procedure, when the price of a financial instrument at a trading centre falls significantly in a single session as compared with the closing price on the previous day at the same trading centre.

### **5. APPLICABLE CRITERIA**

In order to determine whether the requirements referred to in section 4.1 have been met, the CNMV shall bear in mind the criteria and factors set out in Article 24 of Delegated Regulation (EU) No. 918/2012.

The CNMV shall also bear in mind the criteria set out in Article 23 of Delegated Regulation (EU) No. 918/2012, and the calculation methods provided for in Delegated Regulation (EU) No. 919/2012.

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<sup>2</sup> From 2 October 2016, Act 39 of 1 October 2015, on Common Administrative Procedure for Public Authorities, shall apply.

## **6. MEASURES TO BE ADOPTED BY THE CNMV**

1. When the circumstances provided for in section 4.1 arise, the CNMV may adopt the following measures:
  - a. It may require the individuals or organisations that are holding net short positions in relation to a specific financial instrument or class of financial instruments (except for those referred to in Articles 5 to 8 of Regulation (EU) No. 236/2012) to notify the CNMV or publish the details of their position when this reaches or falls below the threshold established to this end.
  - b. It may require the individuals or organisations who are involved in the loan of a specific financial instrument or class of financial instruments to give notice of any significant change to the premiums demanded in order to make the said loan.
  - c. It may restrict or prohibit short selling and similar transactions.
  - d. It may restrict transactions involving sovereign credit default swaps or the value of exposed positions in sovereign credit default swaps.
2. When the price of a financial instrument at a trading centre falls significantly in a single session as compared with the closing price on the previous day at the same trading centre, the CNMV shall examine the advisability of restricting or prohibiting the short selling of the affected financial instrument and limiting transactions on this instrument at the trading centre in question.
3. The foregoing measures may be applied in the circumstances or with the exceptions specified by the CNMV.

## **7. APPROVAL OF THE ADOPTION OF MEASURES BY THE CNMV**

1. Any agreement by which one or more of the measures described in section 6 are adopted, following a proposal from the General Director of Markets, shall contain at least the following information:
  - a. A description of the measures proposed for adoption.
  - b. The details of the financial instruments and trading centres to which it is proposed that the measures forming the subject of the proposal be applied.
  - c. A description of the reasons why it is believed necessary or advisable to adopt the proposed measures and the information that supports this.
  - d. The planned date on which the proposed measures are to take effect, which must conform to the provisions set out in the regulations.
  - e. The term during which the said measures are to remain in force.
  - f. A condition precedent, making the effectiveness of the proposed measures conditional upon a favourable expert opinion from the ESMA.
2. The CNMV's Executive Committee shall be responsible for exercising the relevant powers relating to the restrictions on short selling and similar transactions, in exceptional circumstances, section 1, point 1.c, and section 6, point 1.c of this procedure, and for exercising the said powers even when the CNMV is not the competent authority. In emergency cases in which it is not possible validly to convene the Executive Committee, approval shall be given by the CNMV's Chairman or Deputy Chairman.

The CNMV's Chairman and Deputy Chairman shall be responsible for approving all the other measures provided for in this procedure. In any case, the Chairman shall immediately convene a meeting of the Board in order to inform it of the powers exercised.

## **8. NOTIFICATION OF THE MEASURES APPROVED**

Once a proposal has been approved, the CNMV shall notify the ESMA and all other competent authorities from the other member States regarding the measures approved and the date on which they are to come into effect. This notification shall be made in accordance with the procedures established by the ESMA to this end, and the advance notice required under the regulations shall be provided.

If the expert opinion from the ESMA is positive or, in the absence of this opinion, if no other authority objects, the measures approved shall come into effect on the date planned. Otherwise, the General Director of Markets shall propose one of the two following actions to the competent body, pursuant to point 2 of section 7:

- Publication of the measure approved by the CNMV, including justification of its disagreement with the opinion of the ESMA.
- Adoption of a new decision in accordance with the opinion of the ESMA, revoking the measures adopted.

## **9. PUBLICATION OF THE MEASURES APPROVED**

The CNMV shall publish an announcement on its website giving information on the measures approved.

The measures adopted shall begin to take effect when the announcement is published or at the time specified in the announcement itself, and they shall solely apply to transactions made from that time onwards.

The contents of the announcement shall conform to the provisions set out in Article 25 of Regulation (EU) 236/2012.

## **10. TERM DURING WHICH THE MEASURES ADOPTED ARE TO REMAIN IN FORCE**

The terms during which the measures referred to in this procedure are to remain in force shall conform to the provisions set out in Articles 23 and 24 of Regulation (EU) 236/2012.

## **11. RENEWAL OF THE MEASURES ADOPTED**

Measures adopted shall be renewed in accordance with this procedure.

## **12. PROCEDURAL MANUALS**

1. The General Director of Markets may approve the "Procedural Manuals" required for compliance with and the practical application of the provisions contained in this procedure.
2. The criteria or standards included in the "Procedural Manuals" shall provide basic guidelines and specific operational rules to ensure that duties are performed in the most appropriate and effective way.

3. The “Procedural Manuals” shall contain the controls deemed necessary under the terms of the CNMV’s Risk Management System, in order to ensure effective compliance with provisions set out in law and in this procedure.
4. The process for the preparation of the “Procedural Manuals” shall adhere to the criteria and standards issued by the ESMA in order to promote common supervisory practices, pursuant to the contents of Article 29.2 of Regulation (EU) no. 1095/2010, as well as to any guidelines that the CNMV may publish in relation to this procedure.
5. The “Procedural Manuals” shall be submitted to the CNMV’s Executive Committee.

### **13. APPLICABILITY**

This present procedure shall apply from 21 September 2016, and it shall be revised every year or whenever there is a regulatory change that significantly affects its contents.