



DECISION BY THE CNMV TO IMPOSE, EFFECTIVE IMMEDIATELY AND FOR A PERIOD OF 3 MONTHS, RESTRICTIONS ON SHORT SELLING AND SIMILAR TRANSACTIONS UNDER ARTICLE 85.2.J) OF THE SECURITIES MARKET ACT AND ARTICLE 20 OF REGULATION (EU) 236/2012, DUE TO THE EXISTENCE OF EXCEPTIONAL CIRCUMSTANCES

1 November 2012

The Comisión Nacional del Mercado de Valores (CNMV) has evaluated the individual and overall impact on the market of the measures restricting net short positions in Spanish shares adopted in July 2012 and extended by the decision of 18 October, taking into account the exceptional situation being experienced by the Spanish financial system.

Noteworthy in this respect, as announced on the occasion of that extension, is the ongoing process of restructuring in the Spanish financial sector to cover the banking sector's capital needs. This process is being undertaken in the framework of the Memorandum of Understanding (MoU) signed on 23 July by the European Commission, the Kingdom of Spain and the Bank of Spain. The MoU made the provision of assistance conditional upon fulfilment of a number of conditions, including an assessment of individual capital needs, recapitalisation of the banks, and the segregation of impaired assets into an asset management company.

This process of bank restructuring has not yet concluded, which creates a range of uncertainties with respect to the Spanish financial system that may affect financial stability. In this context, failure to ban short sales would heighten uncertainty through their likely impact on the market. Completion of that process is considered to be absolutely necessary to ensure the stability of the Spanish financial system and capital markets. Moreover, available empirical evidence reveals that a number of events or circumstances that led to the adoption of the July decision and its extension and which may threaten the integrity of the Spanish financial markets are persisting.

Accordingly, the foregoing factors make it advisable to maintain the temporary restrictions on transactions that create or increase net short positions in Spanish shares and to impose a ban, in accordance with 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, effective from this day.

Additionally, on this day, in accordance with article 27 of the aforementioned Regulation, ESMA has issued its opinion on the measures adopted by the CNMV, in which it considers the measure to be appropriate and proportional to address the threats persisting in Spain and that its duration is justified.

<http://www.esma.europa.eu/system/files/2012-715.pdf>

Considering the foregoing, particularly the persistence of the adverse events or circumstances that might threaten financial stability or market confidence, the CNMV has decided:

To impose, effectively immediately, under article 85.2.j) of Act 24/1988, of 28 July, on the Securities Market, and of article 20 of Regulation (EU) No. 236/2012, and having regard to the exceptional circumstances that exist, a precautionary ban on transactions by any natural or legal persons which create a financial instrument or are linked to a financial instrument where the effect or one of the effects of the transaction is to confer a financial advantage on

such natural or legal person in the event of a decline in the price or value of shares listed on a Spanish official secondary market for which the CNMV is considered the competent authority for the purposes of article 9 of Regulation (EC) No. 1287/2006.

The ban will be maintained for a period of three months from the time of its publication on this day and until market close on 31 January 2013, inclusive, and may be extended in accordance with article 24 of Regulation (EU) No. 236/2012 or lifted, if considered necessary.

The precautionary ban will not apply to market-making in the terms provided in Regulation (EU) No. 236/2012. The CNMV will supervise the market-making activities addressed by this exemption in the Spanish securities markets.

The following transactions are also excluded from the ban:

- The creation of, or increase in, short positions arising from transactions whose main objective is not a positive economic outcome resulting from a decline in the share price but, rather, from corporate transactions whose main objective is industrial- or business-related. In this case, execution of the transaction will require prior authorisation by the CNMV.
- The creation of, or increase in, net short positions in the framework of a stabilisation process in accordance with the provisions of chapter III of Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.
- The creation of, or increase in, net short positions when the investor who acquires a convertible bond has a delta-neutral position between the equity component of the convertible bond and the short position taken to cover that component.
- The creation of, or increase in, net short positions where the creation of, or increase in, the short position in shares is hedged by a purchase that is equivalent in terms of proportion on subscription rights.

Article 99.z quinquies) of Securities Market Act 24/1988, of 28 July, defines breach of precautionary measures, including those envisaged under article 85.2.j) of the Act, as a very serious infraction.