

Alert

EU Short Selling Update — France, Belgium and Spain Lift Short Selling Restrictions on Financial Companies

16 February 2012

The ban on short selling financial companies traded on Spanish markets will be lifted with effect from 16 February 2012. The short selling bans on financial companies traded on markets in France and Belgium were lifted with effect from 13 February 2012. However, disclosure requirements with respect to certain short positions are in effect in each of these jurisdictions.

Background

Since 12 August 2011 the regulators of France (the Autorité des Marchés Financiers (“AMF”)), Belgium (the Financial Services and Markets Authority (“FSMA”)), Spain (the Comisión Nacional del Mercado de Valores (“CNMV”)) and Italy (the Commissione Nazionale per le Società e le Borse (“CONSOB”)) have had prohibitions in place on the creation or increase of short positions in certain financial stocks listed on the financial markets in those countries. For more information on the creation of the bans and their extension please refer to our previous *Alerts*.¹

Lifting of the Ban in France

On 13 February 2012 the AMF published a news release on its website² announcing that the provisions prohibiting any creation of a net short position and increase of an existing one in relation to French equity securities in the financial sector ended on 11 February 2012 and is not being extended.

The AMF also notes that a net short position disclosure regime (requiring disclosure to the AMF of any net short position in a French listed company of 0.2% or greater, with additional disclosures at every 0.1% thereafter) has been in place since 1 February 2011. French regulations require that any investor selling French listed shares must be in a position to deliver the securities it has sold within three trading days (T+3).

Lifting of the Ban in Belgium

Also on 13 February 2012 the FSMA announced on its website³ that it had decided to modify its rules on short selling shares in Belgian financial institutions as from 13 February 2012 by replacing the interim ban on the holding of net short positions with a reporting obligation for significant net short positions and imposing a “locate rule”. The basis of the rule requires those persons who sell Belgian shares without possessing or having borrowed them at the time to have made arrangements to ensure that they may have a reasonable expectation that the shares sold can be delivered in a timely manner on the relevant date.

¹ See *Client Alert* (11 August 2011), available at http://www.srz.com/081111_france_spain_italy_belgium_impose_short_sale_restrictions/, and *Client Alert* (12 August 2011), available at http://www.srz.com/081211_france_spain_italy_belgium_impose_short_sale_restrictions/ and *Client Alert* (25 August 2011), available at http://www.srz.com/082511_france_spain_italy_belgium_greece_extend_short_sale_bans/.

² http://www.amf-france.org/documents/general/10310_1.pdf.

³ http://www.fsma.be/en/News/Article/press/div/2012/2012-02-13_shortselling.aspx.

The FSMA notes in its associated FAQs⁴ that although short selling Belgian financial shares may now be permitted, significant net short positions in Belgian financials (representing a net short of 0.25%, or greater, of the capital of one of the relevant issuers) are once again subject to a reporting obligation.

Lifting of the Ban in Spain

On 15 February 2012 the CNMV announced on its website⁵ that it had agreed to lift, with effect from 16 February 2012, the “preventive ban on establishing or increasing short positions on Spanish financial stocks that was agreed on 11th August 2011 and renewed on 25th August and 28th September [2011]”.

The CNMV notes that its short selling disclosure rules remain in place for such stocks, being:

- A requirement to disclose to the CNMV any individual net short positions that reach or exceed a threshold of 0.2% of the share capital of any company admitted to trading on Spanish markets. Further disclosures are required when a previously communicated position either reduced below that threshold or if it increases through further 0.1% thresholds at 0.3%, 0.4%, 0.5%, etc. net short.
- In addition, the CNMV will publish all disclosures that exceed the 0.5% threshold on its website, including the identity of the short seller. For general information purposes, the CNMV will also aggregate all disclosures of 0.2% or greater that are made to it regarding net short positions in a particular Spanish listed company and will publish the figures on its website every two weeks. Such aggregated disclosures will not feature the identities of the short sellers, merely the name of the Spanish listed company and the total level of short positions in that company at the relevant time.

The CNMV announcement also reminds market participants that Spanish securities rules prohibit any naked short selling of Spanish listed companies.

Italy

On 11 January 2012 CONSOB announced on its website⁶ that it was extending the ban on short selling Italian financial sector companies until 24 February 2012. The CONSOB announcement noted that the ban could be modified or revoked depending on market conditions. At the time of writing, CONSOB had not announced any lifting of the ban in effect in Italy.

Pan-European Short Selling Regulation

European Union (“EU”) lawmakers have been developing a harmonised and unified pan-European short selling disclosure regime to be introduced from 1 November 2012 that would provide market participants with certainty as to the short selling rules in force in each of the 27 countries of the EU as the rules in each country will be the same. However, the proposed new rules would still allow national regulators to impose a short-term ban on short selling in domestic markets, but would significantly also give the European Securities and Markets Authority (“ESMA”) the power to impose a ban on short selling across the whole of the EU when two conditions are satisfied:

- ESMA determines that there is a threat to the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the EU, and;
- Measures have not been taken by EU regulators, or those measures taken were not sufficient, to address the threat. For more information on the EU short selling regulation, please refer to our previous *Alert*.⁷

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⁴ <http://www.fsma.be/en/News/Article/faq/faq2mm.aspx>.

⁵ <http://www.cnmv.es/loultimo/levantamiento%20posiciones%20cortas.pdf>.

⁶ http://www.consob.it/mainen/press_release/comunicato_20120111.htm.

⁷ See *Client Alert* (21 October 2010), available at http://www.srz.com/102110_proposed_new_pan_european_rules_on_short_selling/.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or the authors.

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