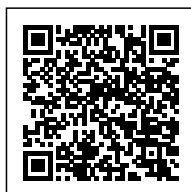


SHORT SELLING: NEW MEASURE IN SPAIN - SJ BERWIN

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On November 1st, 2012, the Spanish Comisión Nacional del Mercado de Valores (CNMV) took the measure to continue applying bans on short selling up to January 31st, 2013 (inclusive).

Leaving aside that this measure could be justified by the current financial situation in Spain, the fact is that it creates a disparity in Europe. In addition, this measure creates a number of uncertainties. Will the deadline for this ban be shortened or extended? What is the CNMV's position on each of the issues where there is some room for discretion? Will this measure evolve in tandem with the

Spanish economy?

It would be advisable that the CNMV identify these uncertainties as some European regulators have already done (eg, the UK's Financial Services Authority (FSA) has published its position on a number of issues under the EC Regulation on short selling). It would likewise be recommendable that this measure evolves with the situation in Spain. It seems reasonable that, as the Spanish situation improves, the scope of the decision is accordingly reduced (eg, by limiting the shares affected by the ban).

This measure has been taken in accordance with the procedure provided under the Regulation (ie, the EC Regulation on short selling). The measure affects all transactions by any natural or legal persons that 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 the competent authority.

Exclusions

The ban will not apply to the following:

Market-making under the terms of the Regulation.

The creation of, or increase in, short positions arising from transactions, the main object of which is not a positive economic outcome resulting from a decline in the share price but, rather, from corporate transactions the main object of which is industrial or business related. In this case, the execution of the transaction will require the prior authorisation from the CNMV.

The creation of, or increase in, net short positions within the framework of a stabilisation process in accordance with the Regulation (EC) No 2273 of December 22nd, 2003 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.

Although this measure does not specifically provide it, the most reasonable interpretation is that it should not be applicable where the CNMV is not the competent authority of the listed shares pursuant to article 9 of the MiFID Regulation, regardless of the fact that such shares may be listed in Spain. Also, where the shares are only listed in Spanish markets that do not amount to regulated markets pursuant to MiFID (such as the Spanish MAB or the Latibex).

FAQs

Regarding the CNMV's frequently asked questions (FAQs), it is not expected that the CNMV will publish any and it is currently referring to ESMA's FAQ.

The reason for this is that the Regulation is the new legal framework for short selling in Spain and the CNMV prefers that specific issues are addressed at a European level by ESMA.

The CNMV will still give specific guidance to those participants willing to comply with the Regulation. This guidance will be given in the light of the particular circumstances.

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