

## **FREQUENTLY ASKED QUESTIONS ON THE AMENDMENT OF THE TEMPORARY RESTRICTION ON SHORT SELLING AS OF 16 APRIL 2020**

These FAQs may be updated and extended at any time.

Please consult the latest version available on FMA's website at the following webpage:

<https://www.fma.gv.at/covid-19/>

Latest update: 15 April 2020

Additional questions can be sent to: [shortselling@fma.gv.at](mailto:shortselling@fma.gv.at)

### **1 AMENDMENT ("THE AMENDMENT" OR "THE MEASURE") TO THE REGULATION OF THE FINANCIAL MARKET AUTHORITY (FMA) ON THE RESTRICTION OF SHORT SELLING OF CERTAIN FINANCIAL INSTRUMENTS IN AN EXCEPTIONAL SITUATION ("FMA-REGULATION") OF 18 MARCH (AMENDMENT AS OF 16 APRIL 2020)**

The Amendment to the FMA Regulation issued on 18 March 2020 has the effect of relaxing the restrictions on short selling of the shares covered by the FMA-Regulation. Whereas previously short sales were prohibited with regard to each individual transaction, the ban now only covers the establishing of new net short positions or increasing of existing net short positions (even on an intraday basis).

This adjustment is intended to make hedging transactions for long positions in the shares covered by the regulation possible again, provided that this does not lead to a newly established or increased existing net short position.

### **2 WHO IS SUBJECT TO THE BAN?**

The restrictions apply to any legal or natural person, irrespective of where they are located.

### **3 WHICH FINANCIAL INSTRUMENTS AND WHAT KIND OF TRANSACTIONS ARE AFFECTED?**

All shares that are admitted to the Regulated Market of the Vienna Stock Exchange (Wiener Börse), namely Amtlicher Handel (MIC: WBAH), and for which the FMA is the relevant competent authority (RCA) pursuant to Article 2(1)(j) of Regulation (EU) No. 236/2012, are subject to the restrictions.

It is not allowed to enter into a new net short position or to increase an existing net short position in shares subject to the measure.

For the list of affected shares, please consult the ESMA Register FIRDS database ([https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_firds](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds)) or alternatively download the relevant files here ([https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_firds\\_files](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds_files))

Only those shares (filter by CFI) which are admitted to trading on WBAH and for which the RCA is AT are affected by the measure.

Shares that are exempted from certain requirements pursuant to Article 16 SSR (the principal venue for the trading of those shares is located in a third country) shall not be subject to this measure. Please consult the list of exempted shares on the ESMA website ([http://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_mifid\\_shsexs](http://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_mifid_shsexs)).

#### **4 DOES THE PROHIBITION APPLY TO TRANSACTIONS IN THE CONCERNED FINANCIAL INSTRUMENTS EXECUTED OUTSIDE AN AUSTRIAN MARKET?**

The restrictions apply regardless of the location or trading venue where a transaction is executed where it results in the creation of or increase in a net short position.

Therefore, the restrictions apply to transactions carried out on a Regulated Market, MTF or OTF within and outside of Austria. Similarly, the prohibition applies to over-the-counter (OTC) transactions and organised trading platforms outside of the European Union.

#### **5 WHEN WILL THE PROHIBITION COME INTO FORCE AND HOW LONG WILL IT BE IN FORCE?**

This measure will come into force on 16 April 2020 and shall apply until 18 May 2020 (end of day, i.e. 23:59:59 CEST), unless repealed or extended before expiry.

#### **6 ARE THERE ANY EXEMPTIONS TO THE PROHIBITION?**

Transactions that are executed as part of market-making activities pursuant to Article 2 (1) lit. k of Regulation (EU) No. 236/2012, provided that they are executed by market makers, who are included in the list pursuant to Article 17 (13) of Regulation (EU) No. 236/2012 are excluded from the prohibition.

Transactions that only lead to an indirect net short position pursuant to Article 3 (1)(b) of Regulation (EU) No. 236/2012, that is assessed as being immaterial, are also excluded from the prohibition.

These net short positions shall be assessed as being immaterial, where they satisfy the following conditions:

- a. They are held via the composition of an index or a basket of securities or an exchange traded fund pursuant to Article 3 (3) of Regulation (EU) No. 236/2012, and
- b. This composition is such that the total weight of financial instruments concerned by this measure in this index, basket or ETF is at all times less than 50 percent.

For examples please see item 7.

#### **7 ARE TRANSACTIONS IN INDEX-RELATED INSTRUMENTS THAT CONTAIN ONE OR MORE RESTRICTED SHARES ALLOWED?**

Please see also item 6.

The ATX for example is subject to the restrictions since the index weight of shares affected by the measure is more than 50 percent. Therefore short sales in financial instruments where the underlying is, or which refer to or are based on the ATX are prohibited if they lead to a net short position.

By contrast, the Stoxx Europe 600 is considered out of scope of the Austrian measure as the index weight of the shares affected is less than 50 percent.

However, a complete list of the indices concerned is not available; each instrument or index has to be assessed on a case-by-case basis ahead of any investment decision. If you are unsure about the composition and whether it might be affected by the Austrian measure, we would recommend to refrain from entering into a transaction that might lead to a net short position.

## 8 TREATMENT OF CONVERTIBLE BONDS AND SUBSCRIPTION RIGHTS

Only transactions for hedging purposes are allowed:

The restrictions do not apply to short positions in a restricted share when the short position is aimed exclusively at covering the risk stemming from the equity component of convertible bond previously purchased, which is converted into that restricted share.

The same exemption applies to short positions in a restricted share aimed at covering the risk stemming from subscription rights previously purchased, which give the right to subscribe to a hitherto unissued restricted share.

This means that, for instance, an investor may buy subscription rights or convertible bonds and sell a corresponding number of underlying shares. In determining the corresponding number of shares, the investor must calculate and apply the relevant delta.

## 9 METHOD OF CALCULATION OF NET SHORT POSITIONS

For the purposes of calculating the net short position in shares pursuant to article 3(4) of Regulation (EU) No 236/2012, the delta-adjusted model for shares set out in Annex II of the Commission Delegated Regulation (EU) No 918/2012 shall be used.

The calculation of net short positions shall take into account transactions in all financial instruments, whether on or outside a trading venue, that confer a financial advantage in the event of a change in price or value of the share.

## 10 EXISTING NET SHORT POSITIONS

Net short positions taken before the publication of the FMA Regulation shall not be affected as long as they are kept at the same net short level or lower.

Maintaining an unaltered net short position held prior to the publication of the Regulation does not constitute an infringement of the prohibition.

The prohibition only refers to creating a new or increasing an existing net short position. Therefore, an investor who opened a net short position before the entry into force of the FMA Regulation shall be entitled to reduce it or keep it at the same level. On the other hand, increasing a position again after having reduced it is not allowed.

For the special case of roll-over transactions please see item 11.

## 11 IS IT ALLOWED TO ROLL-OVER POSITIONS ON DERIVATIVE FINANCIAL INSTRUMENTS?

Investors holding a net short position in a restricted share through expiring derivatives are allowed to

roll it forward, on condition that by doing so the net short position is not increased.

Allowing a long derivative which hedges a short position to expire, thereby resulting in a net short position, would be considered as a breach of the prohibition.

## 12 INTRADAY NET SHORT POSITIONS

Intraday net short positions are not allowed. Creating or increasing a net short position during the trading session is prohibited, even if the investor tends to close the position before the close of business of that trading session.

## 13 UNEXPECTED INCREASE IN NET SHORT POSITIONS AS A RESULT OF VARIATIONS IN VOLATILITY

Investors holding an existing net short position that increases exclusively due to a variation in volatility are not required to reduce their exposure and this will not be considered as a breach of the prohibition.

## 14 CAN AN INVESTOR SELL SHORT NON-AUSTRIAN SHARES?

Restrictive measures to net short positions have also been adopted by the national competent authorities (NCA) of some other Member States.

The relevant information on measures adopted by other Member States can be found on the ESMA website and on the website of the respective NCA.