

**COMMUNICATION REGARDING THE APPLICATION OF THE REGULATION (EU) No 236/2012 ON SHORT SELLING AND CERTAIN ASPECTS OF CREDIT DEFAULT SWAPS.**

The Regulation EU No 236/2012 of 14 March 2012 on short selling and certain aspects of credit default swaps (“Short Selling Regulation”) shall apply from 1 November 2012.

The Regulation introduces *inter alia*:

- a) the obligation of notification to competent authorities of individual net short positions in shares admitted to trading on a regulated market or on a multilateral trading facility of the European Union, where the position is equal to or higher than 0.2% of the issued share capital of the company concerned (article 5);
- b) the obligation of disclosure of individual net short positions in shares, as defined above, to the public, where the position is equal to or higher than 0.5% of the issued share capital of the company concerned (article 6);
- c) the obligation of notification to competent authorities of individual net short positions in debt issued by EU Member States and other sovereign issuers such as the European Investment Bank, where the position is equal to or above certain thresholds (article 7);
- d) restrictions on uncovered short sales in the above-mentioned shares and sovereign debt and on uncovered sovereign credit default swaps (articles 12, 13 and 14);
- e) exemptions from the previous obligations and restrictions for market making activities in relation to shares, sovereign debt and sovereign credit default swaps, and for primary market operations in relation to sovereign debt and sovereign credit default swaps (article 17), upon notification to the competent authority at least 30 days in advance; the notification shall be addressed to the competent authority of the home Member State for market makers and to the competent authority in relation to the sovereign debt concerned for primary dealers.

Concerning the exemptions under e), in order to ensure consistency of market practices and supervisory approaches across the EU, ESMA published on 17 September 2012 a consultation paper, “*Exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps*”, which provides further clarification about the exemptions regime, proposes requirements for market makers to use the exemptions and provides a template notification form.

At national level, article 4-ter (2) of the Legislative Decree No 58 of 24.2.1998 (Consolidated Law on Financial Intermediation) as amended by article 24 of the Decree Law No 179 of 18 October 2012, designates Consob as the national competent authority for receiving the notifications, implementing the measures and exercising the functions and powers provided for in the Short Selling Regulation in relation to shares and financial instruments other than sovereign debt and sovereign credit default swaps.

Paragraph 3 of the same article designates the Banca d’Italia and Consob as the competent authorities for exercising the ordinary functions and powers provided for in the Short Selling Regulation in relation to sovereign debt and sovereign credit default swaps.

Furthermore, the same article envisages that the authorities “*shall specify by means of a memorandum of understanding the procedures for the cooperation and the exchange of information relevant for exercising the above-mentioned functions, also in relation to infringements identified*”

*and measures adopted in the exercise of their respective roles as well as the modalities for receiving the notifications, with a view to minimising the burden for investors”.*

Against this background, for the purposes of the application of the Short Selling Regulation, it is convenient to distinguish obligations concerning shares and obligations concerning sovereign debt and sovereign credit default swaps.

Investors shall refer to the specific Communication published by the Consob for shares.

Concerning sovereign debt and sovereign credit default swaps:

1. any natural or legal person, whose home Member State is Italy, shall notify the Banca d'Italia the intention to use the exemptions for market making activities in sovereign debt and sovereign credit default swaps;
2. any natural or legal person, regardless of where it is located, shall notify the Banca d'Italia the intention to use the exemptions for primary market operations in Italian sovereign debt;
3. any natural or legal person, regardless of where it is located, shall notify the Banca d'Italia significant net short positions in Italian sovereign debt.

Notifications shall be made in accordance with the above-mentioned ESMA consultation paper of 17 September 2012 and, upon approval of the final document, with the ESMA Guidelines, using the enclosed template notification forms.

Notifications relating to the use of the exemptions for market makers and authorised primary dealers shall be sent via certified mail to the Banca d'Italia – Servizio Supervisione sui Mercati e sul sistema dei pagamenti - Divisione Mercati e sistemi di pagamento all'ingrosso – Via Nazionale 91 – 00184 ROMA or via certified electronic mail to [smp@pec.bancaditalia.it](mailto:smp@pec.bancaditalia.it). Any communication shall be sent in advance by email at [shortselling@bancaditalia.it](mailto:shortselling@bancaditalia.it).

Notifications relating to net short positions shall be made via the INFOSTAT system available on the Banca d'Italia's website ([http://www.bancaditalia.it/sispaga/sms/short\\_selling/notifica\\_posizioni](http://www.bancaditalia.it/sispaga/sms/short_selling/notifica_posizioni)). In accordance with the EU legislation, the system envisages the possibility for the net short position holder to delegate the task of filing notifications to a third party. To submit a notification it is required to register to the INFOSTAT system in advance, following the relative instructions.

Once registered, it will be possible to fill in the personal identification form with the data of the position holder and, if different, of the reporting person. The personal identification form along with a copy of the identity document of the contact person and, where applicable, a copy of the mandate between the position holder and the reporting person shall be sent by email at [shortselling@bancaditalia.it](mailto:shortselling@bancaditalia.it). After verification of the information provided, the Banca d'Italia will communicate the credentials for submitting notifications.

Further information is available in the section “Markets and Payment system/Market and Payment system oversight/Short Selling” of the Banca d'Italia's website ([http://www.bancaditalia.it/sispaga/sms/short\\_selling](http://www.bancaditalia.it/sispaga/sms/short_selling)).

Rome, October 2012