

FREQUENTLY ASKED QUESTIONS ON THE TEMPORARY BAN ON NET SHORT POSITIONS

([CONSOB Resolution no. 19655 of July 6, 2016](#) as extended and amended by [CONSOB Resolution no. 19748 of 4 October 2016](#))

IMPORTANT NOTICE: The ban has expired on 5 January 2017

This is a series of responses to questions on the interpretation of the ban adopted by CONSOB on 6 July 2016 and amended and extended on 4 October 2016. This list of FAQs may be updated and extended. Please consult the latest version available at anytime on the CONSOB's website at the following webpage: http://www.consob.it/mainen/markets/short_selling/index.html.

Version of 25 November 2016

1. Who is subject to the prohibition?

The prohibition applies to any natural or legal person (hereinafter "investor"), irrespective of their country of residence, regardless of whether trading takes place in Italy or in another EU or non-EU country, on a trading venue or over-the-counter ("OTC"). The ban affects market makers as well.

2. When will the prohibition come into force and for how long will it apply?

The restrictions will apply from the start of the trading day of 7 July 2016 until the end of the trading day of 5 January 2017. The restrictions can be lifted before that date according to market conditions.

3. To which financial instruments does the prohibition apply?

The prohibition applies to shares issued by Banca Monte dei Paschi di Siena spa – BMPS (ISIN code IT0005092165) as well as to related instruments included in the calculation of net short position, like derivative instruments, depositary receipts, etc, except index-related instruments (see point no. 9 below).

The relevant provisions of Regulation (EU) no. 236/2012 on the calculation of net short position apply (i.e. Article 3 of Regulation no. 236/2012 and Articles 5, 6, 7 and 10 and Annex I and II of Commission Delegated Regulation no. 918/2012 and the relevant ESMA FAQs).

Subscription rights, convertible bonds and other financial instruments which give claims to BMPS shares yet to be issued are also included in the calculation of net short position for the sake of the restrictions (see also point no. 12 below).

Regulation (EU) no. 236/2012, Commission Delegated Regulation no. 918/2012 and the relevant ESMA FAQs are available here:

http://www.consob.it/mainen/markets/short_selling/legal_framework_short_selling.html?symbblink=/mainen/markets/short_selling/link_legal_framework.html

In short, the net short position is the sum of all short positions minus all long positions held by that investor in relation to BMPS shares and related instruments.

By means of illustration, positions stemming from the following transactions, among others, shall be considered in the calculations:

- purchases or sales of shares;
- transactions in options, swaps, futures, contracts for difference, covered warrants.

Financial instruments which entail a bearish position, such as the purchase of put options, shall be considered as short positions.

Positions in derivatives have to be delta adjusted, according to Annex II, Part 1, of Commission Delegated Regulation no. 918/2012.

Fixed income instruments or instruments that give an exposure to the creditworthiness of BMPS (such as credit default swap) shall not be taken into account, with the exception of convertible bonds (see also point no. 12 below).

Borrowed or lent securities are not included in the calculation of the position. In particular, securities lending transactions whereby shares are lent shall not be considered as creating a short position for the lender. On the other hand, securities lending transactions whereby shares are borrowed shall not be considered as a long position for the borrower.

4. What does the investor need to check before entering into a transaction in BMPS shares or related instruments?

The investor must make sure that the intended transaction in the financial instrument does not create or increase a net short position on BMPS share. Special care must be taken when dealing in derivatives since positions shall be accounted on a delta-adjusted basis.

5. Are intraday net short positions allowed?

No, creating or increasing a net short position (whatever the type of transactions used) during the trading day is prohibited, even if the investor intends to close the position before close of business on that day.

6. What should be done by an investor who opened a net short position before the entry into force of the prohibition?

The prohibition only refers to creating or increasing a net short position. Therefore, the investor who opened a net short position before the entry into force of the prohibition can reduce or keep it. Keeping a previous net short position unaltered does not infringe the prohibition. On the other hand, increasing a position after having reduced it is not allowed.

In case an investor had placed an order that is not executed by the time the prohibition has entered into force but, if executed, would create or increase a net short position, the investor must cancel that order.

See also point no. 8 regarding derivative instruments.

7. Does the prohibition apply to transactions in the concerned financial instruments conducted outside an Italian regulated market?

Yes, the prohibition applies regardless of the trading venue where the transaction is executed if it results in creating or increasing a net short position in BMPS shares. Therefore, it applies to transactions carried out on a regulated market or MTF outside Italy. Similarly the prohibition applies to OTC transactions.

8. Is an investor allowed to create a net short position in BMPS shares by using derivatives?

No, investors are not allowed to use derivatives to create or increase a net short position; they may only use derivatives to hedge, create or extend a net long position.

However, in case a net short position is increased passively due to a variation of the relevant delta, this is not considered an infringement to the prohibition.

Investors holding a net short position in BMPS share through expiring derivatives are not allowed to roll forward their position.

9. Are trades in index-related instrument that contain BMPS shares allowed?

No, trading in index-related instruments (like derivatives, ETF, certificates) is allowed due to the marginal weight of the BMPS shares in the most relevant indices (like for example the FTSE MIB, the Euro Stoxx and the Euro Stoxx Bank indices).

However, creating or increasing a net short position in BMPS shares by combining transactions in index-related instruments and other transactions is prohibited. For instance, it is prohibited to implement a strategy consisting in:

- selling futures contracts on an index whose underlying basket includes BMPS shares, and
- buying futures contracts on all/most of the securities included in the underlying basket of the index except for BMPS shares.

It is up to each investor to be able to prove that decisions taken through index products are not a way to enter into short strategies over BMPS shares.

Please note that if, due to index trading, a net short position in BMPS shares reaches a relevant threshold (i.e. 0.2%, 0.3%, 0.4% of BMPS issued share capital and so on), the position holder has the obligation to notify to Consob the change in the net short position. In this case, it is recommended that the position holder clarifies, in the field “comments” of the notification, that the variation in the position has been caused by index trading.

10. If a fund manager acts on behalf of multiple funds, should the calculation of the net short position be made at the fund-specific or manager level or both? What about groups?

The rules provided for in Regulation no. 236/2012 apply. Thus, the calculation has to be performed at the level of the managing company. In case of groups, the calculation has to be done both at the individual entity level and at the group level.

11. Are market makers exempted?

No, market making activities are not exempted from the ban.

12. Can you clarify the treatment of subscription rights, convertible bonds, and other instruments which give claims to BMPS shares yet to be issued?

As provided for in Consob Resolution no. 19748 of 4 October 2016, these instruments are to be included in the calculation only for the sake of the temporary ban to net short positions on BMPS shares.

This means that, for instance, an investor can buy subscription rights or convertible bonds and sell a corresponding number of BMPS shares.

In determining the corresponding number of shares, the investor must calculate and apply the relevant delta (see point no. 3 above). Subscription rights and convertible bonds which have been exercised by the investor have a delta equal to 1.

On 14 November 2016 BMPS has announced the intention to launch a voluntary offer to exchange some subordinated bonds into new BMPS shares yet to be issued (please see BMPS press releases for a detailed description of the offer). For the sake of the ban to net short positions on BMPS shares, the following elements of the offer are relevant:

- The offer is part of a complex plan which includes a capital increase; the exact number of shares to be delivered to bondholders depends, inter alia, on the subscription price of the new shares to be issued in the context of the capital increase;
- The new shares, stemming from the conversion of bonds, should be made available only at the end of the capital increase;
- The bond conversion offer is subject to some conditions (e.g. the successful outcome of the capital increase). Thus, if these conditions are not satisfied, the offer could be cancelled and no share would be delivered to the bondholders.

Taking into account the above-mentioned characteristics of the offer, positions in subordinated bonds which are the object of the offer must be considered in the calculation of net short positions (for the sake of the related ban adopted by Consob) only if and when there is certainty that the offer can no longer be cancelled.

The inclusion of subscription rights, convertible bonds and similar instruments in the ban implies that investors cannot short sell these instruments, unless they hold comparable long positions in BMPS shares or other BMPS-related instruments.

Moreover, it would constitute a breach to the ban the following activity, as it would create a net short position:

- Buy subscription rights, convertible bonds or similar instruments; then
- Sell a corresponding number of BMPS shares; then
- Sell (or let expiry or do not convert by the end of the conversion period) the subscription rights, convertible bonds or similar instruments.

Finally, it is worth highlighting that the usual rules on net short position's calculation apply for the sake of the reporting obligation.

Thus, if an investor buys subscription rights or convertible bonds and sells a corresponding number of BMPS shares, the investor will have to report to Consob the position created by selling the shares if it reaches a relevant threshold (i.e. 0.2%, 0.3%, 0.4% of BMPS issued share capital and so on). In this case, it is recommended that the investor clarifies, in the field "comments" of the notification, that the short position is backed by long positions in subscription rights or convertible bonds or similar instruments.

13. Enforcement – What would be the consequences of non-compliance with the prohibition?

According to Article 193-ter of the Italian Consolidated Law on Finance, anyone who breaches the measures adopted by competent authorities pursuant to Articles 20 of the Regulation no. 236/2012 can be fined from 25,000 euro to 2,500,000 euro. The fines can be increased depending on the personal qualities of the guilty subject, the entity of the product or profit gained by the illicit fact or by the effects produced on the market. The application of the fines entails the confiscation of the product or profit gained by the illicit fact.

Any additional question can be sent to: shortselling-service@consob.it.