

Insight: Milan office

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CONSOB Removes the “Covered” Short Selling Ban Applicable to Italian Banks & Insurance Companies – The “Naked” Short Selling Ban Continues

On September 14, 2012, the Italian Securities Commission (“CONSOB”) removed the “covered” short selling ban applicable to shares of Italian banks and insurance companies, originally adopted through CONSOB resolution No. 18283 dated July 23, 2012 and extended through CONSOB resolution No. 18298 dated July 27, 2012.

These resolutions, introduced to address rising market volatility and downward pressure on share prices, required a person that sells shares of Italian banks and insurance companies must (i) own the shares being sold at the time of entering into the transaction and (ii) hold such shares from the moment of their sale until the date of the settlement of the transaction. The “covered” short selling ban therefore introduced more restrictive short selling rules applicable to financial institutions.

All shares listed on Italian regulated markets still remain subject to two restrictive measures CONSOB introduced in 2011 in anticipation of the implementation of EU Regulation No. 236/2012 of the European Parliament and the Council of March 14, 2012 (which will enter into force on November 1, 2012) including:

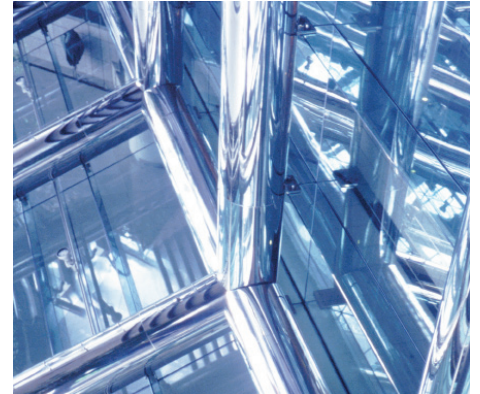
- the “naked” (or uncovered) short selling ban; and
- the transparency measures for net short positions.

The “naked” (or uncovered) short selling ban

The “naked” short selling ban, introduced through CONSOB resolution No. 17993 dated November 11, 2011, requires that any person must not sell any shares listed on Italian regulated markets if it does not have the right to receive the same quantity of shares or the ability to acquire (borrow) the same quantity of shares shorted at the time it places its short sale order.

The ban applies to any person, both Italian and foreign, although exemptions are available to market makers, specialists and liquidity providers.

The ban does not apply to transactions in derivatives instruments, exchange-traded funds (ETFs), option rights or other financial instruments different from shares. However, the restrictions of the “naked” short selling ban also apply to the purchase of uncovered put options and the sale of uncovered call options, where the purchaser of the put and the seller of the call must have the same right to receive or the same ability to acquire the underlying shares at the time of such person purchasing or selling the respective option.



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Transparency measures for net short positions

Any person holding a net short position with respect to issuers of securities whose principal trading market is an Italian regulated stock exchange must comply with specific disclosure requirements introduced by CONSOB through resolution No. 17862 dated July 10, 2011.

The rules require persons holding net short positions (through shares and any financial instrument whose value is linked to the value of such shares) with respect to an issuer to disclose their net short positions to CONSOB any time their net short position reaches or exceeds 0.2% of the issuer's issued share capital. Any subsequent increase or decrease equal to or exceeding 0.1% of the issuer's issued share capital must also be disclosed to CONSOB. As in the case of the "naked" short selling ban, specific exemptions are available to market makers, specialists and liquidity providers.

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