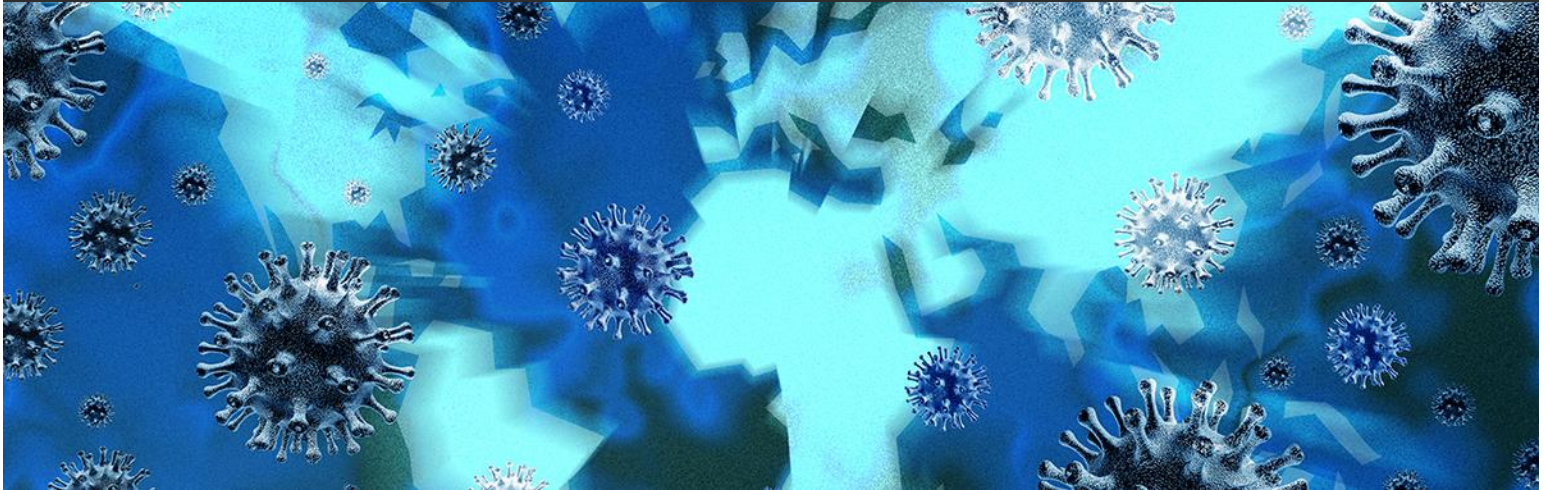


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019 – Focus on Italy



19 March 2020

ESMA and CONSOB Requiring Temporary Precautionary Measures on Net Short Positions and Enhanced Transparency to Face Exceptional Circumstances Linked To COVID-19

On March 16, 2020, the European Securities and Market Authority (ESMA) issued a decision temporarily requiring natural or legal persons holding net short positions in shares traded on an EU-regulated market **to notify for the next three months the relevant competent authority should the position reach or exceed 0.1% of the issued share capital.**

ESMA took this precautionary measure to counter COVID-19's adverse effects on the EU economy and financial markets and to help regulators get information about short-selling sooner and decide if further responses are needed.

Trading in shares since February 20, 2020 (and particularly since March 9, 2020) has been increasingly characterized by **substantial selling pressure and unusual volatility** leading to “**significant downward spirals affecting issuers from all types of sectors**” and causing “*a lack of trust in the functioning of the financial system by market participants*”.

In such a context, ESMA underlined that “*engaging in short selling and building up significant net short positions can amplify selling pressure and downward trends [...] which can have highly detrimental*”

effects on the financial stability of financial institutions and companies from other sectors” and resolved upon the aforementioned temporary measures, **ensuring a unique reporting threshold common to all EU competent authorities.**

ESMA considered that lowering the reporting threshold under the exceptional circumstances due to the ongoing COVID-19 pandemic should **ensure that all national competent authorities across the EU and ESMA itself have the best possible data set available to monitor the market**, improving their capacity to assess the situation adequately and react if the integrity, orderly functioning and stability of the markets require more stringent actions.

This ESMA decision – effective “*immediately*” (i.e., relevant net short positions were notified starting at the close of trading on Monday, March 16, 2020) – has been adopted in a context where certain national competent authorities had already intervened by adopting *ad hoc* resolutions, imposing the temporary prohibition (or limitation) of short selling.

As concerns the Italian authority, with **resolution no. 21301** dated March 12, 2020, CONSOB (securities market government regulator) had already tried to impose a temporary ban on short sales (concerning 85 shares listed on the MTA market of Borsa Italiana). The prohibition was adopted pursuant to Article 23 of Regulation (EU) n. 236/2012, considering the price drop, higher than 10%, recorded by the shares on March 12, 2020. The ban applied for the March 13, 2020, trading session (and was not extended, due to the intention to resolve upon general restrictive measures for a longer period of time).

The decision to adopt general restrictive measures concerning the **entire Stock Exchange list** was taken by CONSOB on March 17, 2020, with the aim (i) to **contain volatility of the financial markets** and (ii) to **strengthen the transparency of the holdings in Italian companies listed on the Stock Exchange.**

Specifically, by adopting the **resolution no. 21303** dated March 17, 2020, CONSOB resolved as follows: “*It is prohibited to take net short positions or to increase existing net short positions, regardless of the place where the transaction is executed and including intraday positions, in any of the shares included in Attachment no. 1 of this Resolution, under Article 20 of the above-mentioned Regulation, effective from the date of adoption of this Resolution for a three-month period*”.

The decision – aimed at restoring market integrity – is also in line with the extraordinary measures on short selling adopted by ESMA, on one side, and by the Supervisory Authorities of Spain, France and Belgium, on the other side. ESMA has issued an official opinion agreeing the emergency short selling prohibition on all transactions (executed both on a trading venue or over the counter) which might constitute or increase net short positions on all shares traded on the Italian MTA regulated market.

On the same date, by adopting **resolution no. 21304**, CONSOB resolved (pursuant to article 120 paragraph 2-bis of the Consolidated Law on Finance (TUF), **to lower the minimum thresholds** requiring an investor to notify the participations held in a listed company. This second resolution **only affects 48 companies (which have been selected on the basis of capitalization and ownership structure criteria)**, as listed in the Schedules attached to the Resolution. The new threshold is set at 1% for non-SME companies and 3% for SMEs, as listed – respectively – in Schedule A and Schedule B attached to the Resolution.

These measures will be in force starting March 18, 2020, and will be valid, unless earlier revoked, for a period of three months.

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