

## OPINION

### **Emergency measure by the Greek HCMC under Section 1 of Chapter V of Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps**

#### **I. Legal basis**

1. According to Article 27(2) of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (the Regulation), the European Securities and Markets Authority (ESMA) shall within 24 hours of the notification having been made by a competent authority under Article 26 of the Regulation issue an opinion on whether it considers the measure or proposed measure necessary to address the exceptional circumstances.
2. ESMA's competence to deliver an opinion is based on Article 29(1) (a) of Regulation (EC) No 1095/2010 (ESMA Regulation). In accordance with Article 44(1) of the ESMA Regulation the Board of Supervisors has adopted this opinion.

#### **II. Previous measures adopted by the Hellenic Capital Market Commission (HCMC)**

3. On the 29th of June 2015, ESMA issued an opinion on the emergency measure proposed by the HCMC under Article 20 of the Regulation. The measure consisted of a temporary prohibition of transactions in any financial instrument that create, or increase, a net short position on any of the shares admitted to trading on the Athens Exchange and the Multilateral Trading Facility of "EN.A" (Alternative Market of the Athens Exchange) of which the relevant Competent Authority is HCMC and was applied from 30th June 2015 at 00:00:01 CET to the 6th July 2015 at 24:00:00 (CET).
4. The HCMC indicated that the measure was a complementary action to the ones already established on the 29th of June 2015 by the Greek Authorities in order to tackle the broader Greek financial system crisis.
5. On the 6th, the 13th, the 20th and the 27th of July and on the 3<sup>rd</sup> of August 2015, some of the measures adopted by the Greek authorities were renewed until the 30<sup>th</sup> of August 2015.

6. On the 31<sup>st</sup> of August 2015, in accordance with Article 26 of the Regulation, the HCMC introduced a new emergency measure under Article 20 of the Regulation consisting in a ban on short selling of shares and units of Exchange Traded Funds (ETFs) admitted to trading on the Athens Exchange and the Multilateral Trading Facility of “EN.A” (Alternative Market of the Athens Exchange) of which the relevant Competent Authority is the HCMC. It also concerned all depository receipts (ADRs, GDRs) representing shares admitted to trading on the Athens Exchange and the Multilateral Trading Facility of “EN.A” (Alternative Market of the Athens Exchange). The short selling measure applied to any natural or legal person, irrespective of their country of residence, but contained the exemption for market making activities, provided that short selling transactions are conducted for hedging purposes. The emergency measure adopted on August 31<sup>st</sup> expired at 24:00:00 (CET) on the 30<sup>th</sup> of September 2015.
7. In respect of all the above cases, the HCMC notified ESMA and competent authorities of its intention to impose/renew the relevant short selling measures in accordance with Article 26 of the Regulation and ESMA issued in all cases a positive opinion concerning the imposition/renewal of the relevant short selling measure pursuant to Article 27(2) of the Regulation.

### **III. Present measure**

8. On the 30<sup>th</sup> of September 2015, in accordance with Article 26 of the Regulation, the HCMC notified ESMA and other competent authorities of its intention to make use of its powers of intervention in exceptional circumstances and introduced a new emergency measure under Article 20 of the Regulation.
9. The measure consisted in a ban on short selling of shares of five credit institutions admitted to trading on the Athens Exchange and comprising the FTSE/Athex Banks Index, irrespective of the venue where the transaction is executed. The temporary prohibition includes sales of shares covered by subsequent intraday purchases. The temporary prohibition of short selling applies to all depository receipts (ADRs, GDRs) and warrants representing shares of such credit institutions admitted to trading on the Athens Exchange and comprising the FTSE/Athex Banks Index.
10. The above mentioned credit institutions are:
  - Alpha Bank A.E. (ISIN GRS015013006)
  - Attica Bank S.A. (ISIN GRS001003003)
  - National Bank of Greece S.A. (ISIN GRS003003019)
  - Eurobank Ergasias S.A. (ISIN GRS323003004)
  - Piraeus Bank S.A. (ISIN GRS014003008)

11. In the notification, the HCMC explained the reason for the measure was that in July 2015 the Eurogroup agreed on a specific package of measures regarding the development of the Greek Economy, the most important element of the Eurogroup agreement being that 25 billion euros would be earmarked for the recapitalisation needs of the Greek Banking system. Nevertheless, the amount of funds needed to secure the capital adequacy of the Greek banks, and most importantly, the legal framework that would apply in relation to such recapitalisation, including whether some incentives for private shareholders will be provided or not, had not been officially disclosed at the time.
12. On the 30<sup>th</sup> of September 2015, ESMA issued a positive opinion regarding this new emergency measure. The measure entered into force as of 00:00:01 hours (CET) on the 1<sup>st</sup> of October 2015 and the original expiring date was the 9<sup>th</sup> of November 2014 24:00:00 hours (CET).
13. On the 9<sup>th</sup> of November 2015, the HCMC notified ESMA and other competent authorities of its intention to make use of its powers of intervention in exceptional circumstances and to renew the emergency measure originally introduced on the 30<sup>th</sup> of September 2015. On the same day ESMA issued a positive opinion regarding this new emergency measure, which is expiring on the 7<sup>th</sup> of December 2015 at 24:00:00 (CET).
14. On the 7<sup>th</sup> of December 2015, the HCMC notified ESMA and other competent authorities of its intention to make use of its powers of intervention in exceptional circumstances and to renew the current emergency measure introduced on the 30<sup>th</sup> of September 2015.
15. The proposed renewal would concern exactly the same instruments as the original measure (see paragraph 8 and 9), foreseeing an exemption for market making activities in the affected financial instruments.
16. In the notification for the renewal, the HCMC explains that the Greek Parliament voted on October 31<sup>st</sup> the relevant law 4340/2015 and that the re-capitalisation of the Greek Banking System the law provides for is currently in progress and has not been yet concluded for all credit institutions. Moreover, trading on the new shares issued from the relevant capital raising has not yet been started in all cases and thus the effect on the share price of credit institutions and on the volatility it might impose, has not yet been fully evaluated by market participants.
17. In particular, the recapitalization process has been completed for two out of four bank institutions, namely ALPHA BANK and EUROBANK. However, trading of the new shares on these two banks was initiated on December 2<sup>nd</sup> and since then increased volatility has been observed, signified that the share prices have not fully incorporated all material information regarding the prospects of said banking institutions. Moreover, trading on the new shares of PIRAEUS BANK and NATIONAL BANK OF GREECE is expected to commence on December 8<sup>th</sup> and December 14<sup>th</sup>, respectively. Finally, ATTICA BANK rights' subscription period is scheduled to end on December 10<sup>th</sup> and, subject to the successful completion of the issue, trading of the new shares is expected for around

December 14th, 2015. Consequently, the process of the banks' recapitalization, including the listing on the new shares is expected to be fully finalized by mid-December.

18. Within this context, the HCMC argues that the lifting of the ban on short sales would tend to increase price volatility on listed credit institutions and will increase market uncertainty. Taking into consideration that the market behaviour of banking sector securities has traditionally played a very important role in driving overall market valuations, concerns remain as regards unexpected sudden and significant swings in market confidence and therefore in relevant asset prices. The HCMC adds that the successful conclusion of the aforementioned bank re-capitalisation and restructuring process as well as the commencement of trading of the new shares of all credit institutions are thus absolutely necessary, in order to safeguard the stability of the financial system and of the Greek capital market.
19. Based on the above, the HCMC believes that adverse circumstances persist in the Greek capital market, including also the existence of capital controls in respect of the stock exchange transaction, but mainly in connection with the re-capitalisation of the systemic credit institutions that has not been finalised yet, resulting mainly in persistent market uncertainty that poses threats to the financial stability and the general level of market confidence.
20. In the notification, the HCMC also explains that the proposed limited temporary ban of short-selling concerning shares of credit institutions admitted to trading on the Athens Exchange is not expected to significantly impair price discovery and therefore market efficiency. Given that the main liquidity and trading activity on those instruments normally is located within Greece, the HCMC believes the proposed renewal would not create disproportionate negative effects, since it would affect a fairly small part of the EU overall market.
21. The proposed renewal of the emergency measure should be in force as of 00:00:01 hours (CET) on the 8<sup>th</sup> of December 2015 until 24:00:00 (CET) on the 21<sup>st</sup> of December 2015.

#### **IV. Opinion**

22. ESMA is adopting the following opinion on the measure notified on the 7<sup>th</sup> December, on the basis of Article 27(2) of the Regulation:

##### ***On the adverse events or developments***

ESMA considers that adverse developments which constitute a serious threat to market confidence in Greece still persist for the following reasons. Despite the partial reopening of credit institutions on the 20<sup>th</sup> of July 2015, the reopening on the 3<sup>rd</sup> of August 2015 of the ATHEX regulated market, the Multilateral Trading Facility of "EN.A", and of the Electronic Secondary Market "HDATA" for government bonds, and the approval by the

Greek Parliament of the law 4340/2015 regarding the re-capitalisation of the Greek banking system, fragility in the financial system and in the Greek economy still persists due to the situation of the banking sector in Greece. The successful conclusion of the Greek banks' re-capitalisation is important in order to safeguard the stability of the financial system and of the Greek capital market, as well as the protection of investors. ESMA considers that given that the trading of the new issued shares has not started yet for all credit institutions and that the consequences of that have not been evaluated by market participants, there is a risk of high volatility in the relevant markets.

#### ***On the appropriateness and proportionality of the proposed measure***

ESMA considers that the renewal of the emergency measure is appropriate and proportionate to address the above mentioned threats that persist in the Greek financial markets. Restricting short sales in the shares of the five Greek credit institutions admitted to trading on the Athens Exchange and comprising the FTSE/Athex Banks Index would allow to avoid the threats to financial stability to exacerbate, especially considering that the re-capitalisation of the Greek banking system is currently in progress and has not been concluded yet for all credit institutions. The measure is also aimed at reducing market volatility which might render the re-capitalisation more difficult and more costly. The exemption foreseen for market making activities is justified by the fact that market makers should be allowed to properly carry out their activity, thus enhancing the liquidity on the above mentioned shares and contributing to the adequate functioning of Greek financial markets.

#### ***On the duration of the proposed measure***

ESMA considers that the duration of the proposed renewal is justified, taking into account that the ongoing re-capitalisation of the five credit institutions affected by the measure, including the listing of the new shares, is expected to be finalized soon. Under these circumstances, ESMA considers it is necessary and appropriate for HCMC to renew the short selling ban on the mentioned Greek credit institutions admitted to trading on the Athens Exchange and comprising the FTSE/Athex Banks Index until the 21<sup>st</sup> of December 2015. Besides, ESMA takes into consideration HCMC's statement in its notification of intent that the proposed measure may be lifted before the end of the established period should the circumstances allow for it, though not excluding an additional renewal of the measure in accordance with the provisions of the Regulation, should the re-capitalisation process not be concluded by the expiry date of this renewal.