



Regulation of the Financial Market Authority (FMA) on the restriction of short selling of certain financial instruments in an exceptional situation

Full title

Regulation of the Financial Market Authority (FMA) on the restriction of short selling of certain financial instruments in an exceptional situation (Regulation prohibiting Short Selling)

Original Version: Federal Law Gazette II No. 106/2020

Amendments: Federal Law Gazette II No. 157/2020

Preamble/Promulgation clause

Based on Article 176 para. 1 of the Stock Exchange Act 2018 (BörseG 2018; Börsegesetz 2018), published in Federal Law Gazette I No. 107/2017, last amended by Federal Act in Federal Law Gazette I No. 20/2020, the following shall be determined by Regulation:

Text

Subject matter and scope

Article 1. (1) In issuing this regulation the FMA exercises its powers pursuant to Article 20 of Regulation (EU) No. 236/2012, OJ L 86 of 24.03.2012 on short selling and certain aspects of credit default swaps, in the version amended by Regulation (EU) No. 909/2014, OJ L 257 of 28.08.2014, p. 1, as the competent authority pursuant to Article 176 para. 1 of the Stock Exchange Act 2018 (BörseG 2018; Börsegesetz 2018) published in Federal Law Gazette I No. 107/2017, in the version of the Federal Act amended in Federal Legal Gazette I No. 64/2019.

(2) All shares that are admitted to the Regulated Market of the Vienna Stock Exchange (Wiener Börse), and for which the FMA is the relevant competent authority pursuant to Article 2 (1) point j of Regulation (EU) No. 236/2012, are subject to the restrictions pursuant to Article 2 of this Regulation.

(3) Shares, for which pursuant to Article 16 (1) of Regulation (EU) 236/2012 the principal venue for trading is located in a third country, shall not be covered by the ban on net short positions pursuant to Article 2 para. 1.

Ban on Net Short Positions

Article 2. (1) No new net short positions shall be allowed to be established, or such existing positions increased, in the financial instruments listed in Article 1 para. 2 of this Regulation, irrespective of whether the transactions in question are conducted on a trading venue or outside of a trading venue ("over-the-counter"; OTC).

(2) Transactions that are executed in relating to market-making activities pursuant to Article 2 (1) lit. k of Regulation (EU) No. 236/2012 shall be excluded from the ban pursuant to para. 1, provided that they are executed by market makers, who are included in the list pursuant to Article 17 (13) of Regulation (EU) No. 236/2012.

(3) Transactions are excluded from the prohibition pursuant to para. 3, which only lead to an indirect net short position pursuant to Article 3 (1) lit. b of Regulation (EU) No. 236/2012, which is to be assessed as being immaterial.

(4) An indirect net short position shall be assessed as being immaterial as defined in para. 3, where it:

1. is held about the composition of an index or a basket of securities or an exchange traded fund pursuant to Article 3 (3) of Regulation (EU) No. 236/2012, and
2. the composition pursuant to no. 1 regarding the financial instruments listed in Article 1 para. 2 of this Regulation, at all times contains share of value of less than 50 percent of one or several financial instruments covered by Article 1 para. 2 of this Regulation.

Final provision

Article 3. (1) Pursuant to Article 176 para. 2 BörseG 2018, this Regulation shall enter into force in light of the urgency of the prohibition of short selling when it is published on the Internet on the FMA's website. Thereafter the FMA shall also announce it in the Federal Law Gazette.

(2) This Regulation will be repealed at the end of 18 May 2020.

All English translation of the authentic German text is unofficial and serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt; BGBl.). All translations have been prepared with great care, but linguistic compromises had to be made. The reader should also bear in mind that some provisions of these laws will remain unclear without certain background knowledge of the Austrian legal and political system. Please note that these laws may be amended in the future and check occasionally for updates.



(3) Article 1 para. 3, Article 2 paras. 1 to 4 and Article 3 para. 2 in the version of the amendment published in Federal Law Gazette II No. 157/2020 shall enter into force on 16 April 2020. Article 2 para. 5 in the version of the Regulation published in Federal Law Gazette II No. 106/2020 shall be repealed at the end of 15 April 2020.