

NORWAY TO IMPOSE GENERAL PROHIBITION ON NAKED SHORT SELLING

Norwegian authorities intend to introduce a general ban on naked short selling of securities listed on Norwegian regulated markets in a proposal for amendments to the Norwegian Securities Trading Act. The proposal, which was presented to the Norwegian Parliament in March 2010, suggests that the current prohibition applicable to investment firms should be expanded and apply to all investors.

Prohibition applicable to investors

Investment firms operating in the Norwegian market are prohibited from engaging in naked short sales and acting as intermediaries in relation to naked short selling of transferable securities listed on Norwegian regulated markets. This prohibition does currently not apply to investors directly.

The proposal suggests that the current prohibition on naked short selling be extended and apply to all types of investors, including private individuals as well as corporate entities. The prohibition should apply to all investors equally, irrespective of their home state or country of origin.

The proposal intends to close a regulatory loophole which at times may have enabled investors to expose investment firms to significant settlement risk as well as to manipulate prices by creating an artificially high level of supply and sales pressure on certain instruments

Instruments concerned by the ban

The prohibition will apply to financial instruments listed on Norwegian regulated markets, including transferable securities, units in open-ended collective investment undertakings as well as money market instruments. Investors will not be entitled to sell such instruments which they do not own without having access to the relevant instruments in a manner which ensures delivery of the shorted instruments at settlement date. Coverage could be provided e.g. by stock borrowing.

The proposed general ban on naked short selling will not apply to trading in derivatives. Hence, establishment of short positions by way of derivatives instruments is not expected to be subject to the ban. Existing regulations do, however, impose collateral requirements on Norwegian investment firms engaging in and acting as intermediary in relation to derivatives trading.

Geographical scope of ban

The prohibition on naked short sales will apply to all transactions in relevant instruments listed on Norwegian regulated markets, and in principle apply irrespective of where the transactions take place.

Sanctions for non-compliance

Breaches of the ban are proposed to be subject to criminal sanctions, including fines and imprisonment sentences of up to one year.

Timing

It is expected that the proposal will be voted by the Norwegian Parliament within the first half of 2010. Entry into force of the new amendments may at the earliest be expected around 1 July 2010.

Legal basis for temporary general bans on short selling

The proposal additionally suggests that an amendment to the Norwegian Securities Trading Act be introduced, which will authorize the Norwegian Financial Supervisory Authority ("NFSA") to impose temporary general bans on all short sales (naked as well as covered short selling).

It is proposed that such temporary measures should be restricted to periods of up to maximum six months (with a possibility for extensions), and reserved to market conditions where short selling may disturb financial stability or the integrity of the market. Temporary bans may according to the proposal also include bans on derivatives trading expected to have similar effects as short selling of financial instruments.

During the financial turmoil of October 2008, the NFSA imposed a temporary ban on short sales of Norwegian listed financial companies. It was argued that short selling of financial stock represented potentially manipulative behavior, and would be considered an unreasonable business method under the then prevailing extraordinary market conditions. This temporary ban was lifted in October 2009. The NFSA's introduction of the temporary ban in 2008 has been criticized for lacking necessary basis in Norwegian legislation. The proposal recognizes this criticism and intends to remedy these weaknesses.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Cecilie Kvalheim, ckv@wr.no
+47 22 82 75 93/+47 920 69 042

Ketil Bøe, keb@wr.no
+47 22 82 76 96/ +47 976 99 405