

NEW NORWEGIAN RESTRICTIONS ON NAKED SHORT SELLING

As alerted in our March 2010 newsletter, the Norwegian Parliament has passed a general ban on naked short selling of securities listed on Norwegian regulated markets by way of amendments to the Norwegian Securities Trading Act. The former prohibition applicable to investment firms has been expanded and applies to all investors and intermediaries as per 1 July 2010.

Prohibition applicable to investors

The former prohibition on naked short sales applied to investment firms operating in the Norwegian market in relation to naked short selling of transferable securities listed on Norwegian regulated markets, but did not apply to investors directly.

The new amendment entering into force on 1 July 2010 extends the prohibition on naked short selling and applies to all types of investors, including private individuals as well as corporate entities as well as intermediaries. The prohibition applies to all investors equally, irrespective of their home state or country of origin.

The amendment closes 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 covered by the ban

The prohibition applies 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 are not 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 general ban on naked short selling does not apply to trading in derivatives. Hence, establishment of short positions by way of derivatives instruments is not 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 applies to all transactions in instruments listed on Norwegian regulated markets and in principle irrespective of where the transactions take place.

Sanctions for non-compliance

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

What constitutes short selling?

The question of deciding when an investor shall be regarded as becoming the owner of purchased shares, and also when an investor not owning shares shall be regarded as having coverage in a manner which ensures delivery at settlement date, has been subject to fierce debate amongst the Norwegian Financial Supervisory Authority (the "NFSA") and market participants over the last few years.

Investors should note that the NFSA takes a particularly conservative approach to this issue. Hence, an investor will e.g. neither be regarded as having become the owner of, nor as having access to cover shares in relation to, newly issued shares which the investor has subscribed for, has been allotted and has paid up, as long as the share capital increase has not been registered with the Norwegian Registry of Business Enterprises. Further, the NFSA has in former precedents relating to extraordinary market situations with respect to trading of a particular stock stated that investors who sold purchased shares within the regular T+3 settlement cycle had neither become owner of the shares, nor were they regarded as having safe access to the shares as coverage, before settlement had actually taken place (i.e. the purchased shares had been credited to the investors' securities account with the Central Securities Depository).

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