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European Short Selling Bans Lifted

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Amid growing evidence that short selling bans function, at best, as very temporary circuit breakers with no long term effect on volatility, several European regulators have lifted their bans on short selling as of February 2012. The bans, imposed in August 2011, have followed the trajectory set out below (along with a summary of the disclosure regime still in force in the UK and the on-going position in Greece). In all cases, while the regulators have lifted outright bans, disclosure requirements and various restrictions on naked short selling remain in place:

Belgium: Last year's "indefinite" ban on short transactions in the securities of specified financial institutions (new short positions and any increase in existing short positions) has now been lifted. A naked short selling ban remains in place in the form of a locate requirement (to at least have arrangements made to ensure a reasonable expectation of timely delivery of the sold shares). Also in place are reporting requirements in relation to net short positions of 0.25% or greater of the capital of a relevant issuer.

France: The French ban on new short positions and increases to existing short positions in the securities of specified financial institutions, which had been extended on a number of occasions, has now been lifted. The French regulator has reminded market participants that it implemented a net short position disclosure regime for equities in February 2011 (disclosure of any net short position of 0.2% or more) which continues to be in force, and that under French regulations, any investor must be in a position to deliver securities sold at T+3.

Italy: Having indicated it was going to prolong its ban on the creation of new short positions and the extension of existing positions in the securities of certain financial institutions, Italy's regulator has now lifted that prohibition. There are limits on naked short selling and credit default swaps and a ban on short selling positions above 0.2% of capital remains in place.

Spain: Spain has also lifted what was an open-ended ban on short selling of securities of certain financial institutions. Under Spanish law, naked short selling remains prohibited and disclosure obligations in relation to positions above 0.2% of capital admitted to trading also remain in place. Note that the Spanish regulator will make public all individual disclosures exceeding 0.5%, including the identity of the short seller.

UK: The 2008 restrictions on the short selling of certain financial stocks were not repeated or extended when other European Union member states took action in 2011. Instead, the Financial Services Authority has instituted and maintained disclosure obligations in relation to "disclosable short positions". These are positions that reach or exceed 0.25% of the issued share capital of a UK company or UK-listed security and the security concerned is the subject of a rights issue.

Greece: Unsurprisingly, the Greek ban on short selling on the Athens stock exchange was extended for a period of six months when it expired on 27 January 2012. This was the third extension of the ban since its introduction in August 2011.

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