

NEWSLETTER

Financial Markets Law

Stricter Norwegian rules on short sales

On 5 March 2010, the Norwegian Ministry of Finance put forward proposals that will impose further restrictions on short selling in Norway. The restrictions will also apply to non-Norwegian investors and investment firms.

THE REQUIREMENT FOR COVERED SHORT SALES TO EXTEND TO INVESTORS GENERALLY

Under current regulations, investment firms providing investment services in Norway in relation to financial instruments may only mediate and execute orders to sell financial instruments not owned by the client if the client has access to the financial instruments which will ensure timely delivery under the contract. This restriction does not apply directly towards investors, which have made the requirement less effective. Recent cases have also revealed that it may be difficult for investment firms to verify whether the client has access to the instruments in question or not.

The proposal from the Ministry of Finance will imply the following:

- Any investor selling financial instruments listed in Norway not owned by the investor, must have access to the financial instruments in order to assure timely delivery under the contract. Access can typically be ensured by lending arrangements. Investment firms will continue to have an obligation to verify that investors have access to the instruments.
- Investors breaching this requirement may risk both administrative sanctions (surrender of profits) and criminal sanctions (a fine and/or imprisonment).
- Derivative trading and short positions arising thereof are not covered by the new rules.

It is expected that the new rules will enter into force on 1 July 2010.

NORWEGIAN FSA GIVEN EXPLICIT AUTHORITY TO TEMPORARILY PROHIBIT SHORT SALES

As reported in our news letter of October 2008, the Norwegian FSA imposed a temporary ban on any short selling in Norwegian financial shares on 8 October 2008. This ban was lifted in September 2009.

The legal basis for the ban was controversial, as it was only based on the Norwegian FSA's interpretation of a general prohibition on unreasonable business practices.

The proposal from the Norwegian Ministry of Finance will give the Norwegian FSA an explicit authority to temporarily prohibit short sales, provided such trading may harm financial stability or the integrity of the markets. Such a ban may also cover derivative trading and short positions arising thereof.

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