

Delibera n. 21303

Divieto temporaneo di assumere o incrementare posizioni nette corte su azioni negoziate sul mercato regolamentato MTA, ai sensi dell'articolo 20 del Regolamento UE n. 236/2012 del Parlamento europeo e del Consiglio del 14 marzo 2012

LA COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA

VISTA la legge 7 giugno 1974, n. 216, e le successive modificazioni e integrazioni;

VISTO il Regolamento UE n. 236/2012 del Parlamento europeo e del Consiglio, del 14 marzo 2012;

VISTO l'articolo 4-ter, comma 2, del decreto legislativo n. 58 del 24 febbraio 1998, che assegna alla Consob il compito di attuare le misure ed esercitare le funzioni e i poteri previsti dal Regolamento UE n. 236/2012 del Parlamento europeo e del Consiglio, del 14 marzo 2012 con riferimento, tra l'altro, ai titoli azionari;

VISTO l'articolo 12 del Regolamento UE n. 236/2012 del Parlamento europeo e del Consiglio del 14 marzo 2012, che impone alcune restrizioni alle vendite allo scoperto di titoli azionari in assenza della disponibilità dei titoli;

VISTO l'articolo 20 del suddetto Regolamento UE n. 236/2012, che definisce il potere di adottare temporaneamente misure restrittive in materia di posizioni nette corte al verificarsi di determinate condizioni;

VISTO il parere positivo dell'ESMA, rilasciato ai sensi dell'articolo 27 del suddetto Regolamento UE n. 236/2012;

VISTO il provvedimento dell'ESMA del 16 marzo 2020, che introduce un obbligo temporaneo di notifica alle autorità competenti delle posizioni nette corte uguali o superiori alla soglia dello 0,1% del capitale sociale di emittenti con azioni ammesse alle negoziazioni in un mercato regolamentato;

CONSIDERATO che il suddetto provvedimento dell'ESMA è una misura diversa dalle "restrizioni alle vendite allo scoperto e operazioni analoghe" previste dalla presente delibera;

CONSIDERATO il rilevante incremento della volatilità e la significativa discesa dei prezzi verificatesi, in particolare, dal 6 marzo 2020, con riferimento alle azioni indicate nell'allegato 1 alla presente delibera;

RITENUTE non sufficienti le misure restrittive previste dall'articolo 12 del citato Regolamento UE n. 236/2012;

RITENUTO che l'adozione della presente delibera sia indifferibile al fine di preservare l'ordinato svolgimento delle negoziazioni e la tutela degli investitori;

RITENUTO che per garantire la fiducia del mercato sia necessario introdurre temporaneamente misure restrittive in materia di posizioni nette corte sulle azioni indicate nell'allegato 1 alla presente delibera;

RITENUTO che la presente delibera rappresenti una risposta proporzionata al fine di preservare l'ordinato svolgimento delle negoziazioni e la tutela degli investitori e al fine di garantire la fiducia del mercato;

D E L I B E R A:

1. Il divieto di assumere o incrementare posizioni nette corte, ovunque effettuate, incluse le posizioni assunte in ambito infragiornaliero, in relazione alle azioni indicate nell'allegato 1 alla presente delibera, ai sensi e per gli effetti dell'articolo 20 del citato Regolamento UE n. 236/2012, per un periodo di tre mesi dalla data della presente delibera.

2. Il divieto si applica a chiunque, persona fisica o giuridica, residente in Italia o in Paesi esteri, anche al di fuori dell'Unione Europea.

3. Si specifica, ai sensi dell'articolo 20, comma 3, che il divieto non si applica all'attività di *market making*, come definita dall'articolo 2, comma 1, lettera k, del citato Regolamento, purché il soggetto che la pone in essere sia iscritto nell'elenco tenuto dall'ESMA.

4. Si specifica, ai sensi dell'articolo 20, comma 3, del citato Regolamento UE n. 236/2012, che il divieto non si applica alle negoziazioni di strumenti finanziari su indici finanziari, in cui sono incluse le azioni indicate nell'allegato 1 alla presente delibera, purché tali azioni non rappresentino più del 20% del peso dell'indice.

5. Si specifica, ai sensi dell'articolo 20, comma 3, che il divieto non si applica alle posizioni nette corte create o incrementate esclusivamente per finalità di copertura della componente azionaria di obbligazioni convertibili acquistate precedentemente.

6. Si specifica, ai sensi dell'articolo 20, comma 3, che il divieto non si applica alle posizioni nette corte create o incrementate esclusivamente per finalità di copertura di diritti di opzione acquistati precedentemente.

La presente delibera viene trasmessa all'ESMA e a Borsa Italiana spa e pubblicata nel sito *internet* e sul Bollettino della Consob.

17 marzo 2020

Allegato 1 - Elenco titoli oggetto del divieto alle posizioni nette corte

ISIN	DENOMINAZIONE
IT0001008876	A.S. ROMA
IT0001233417	A2A
IT0001207098	ACEA
IT0001469953	ACOTEL GROUP
IT0001382024	ACSM-AGAM
IT0005350449	AEDES
IT0001384590	AEFFE
IT0001006128	AEROPORTO GUGLIELMO MARCONI DI BOLOGNA
IT0004720733	ALERION
IT0004359037	ALGOWATT
IT0005314635	ALKEMY
IT0001042297	AMBIENTHESIS
IT0004056880	AMPLIFON
IT0004998065	ANIMA HOLDING
IT0005241192	AQUAFIL
IT0004093263	ASCOPIAVE
IT0003261069	ASTALDI
IT0000084027	ASTM
IT0003506190	ATLANTIA
IT0001137345	AUTOGRILL SPA
IT0000084043	AUTOSTRAD E MERID
IT0005119810	AVIO
IT0003261697	AZIMUT
IT0001268561	B&C SPEAKERS
IT0005187460	B.F.
IT0005244402	BANCA FARMAFACTORING
IT0001031084	BANCA GENERALI
IT0003188064	BANCA IFIS
IT0000074077	BANCA INTERMOBILIARE
IT0004776628	BANCA MEDIOLANUM
IT0003173629	BANCA SISTEMA
IT0005218380	BANCO BPM
IT0001033700	BASICNET
IT0004412497	BASTOGI SPA
IT0005108763	BCA CARIGE
IT0000088853	BCA FINNAT
IT0005218752	BCA MPS
IT0000784196	BCA POP SONDRIO
IT0001073045	BCA PROFILO
IT0001041000	BCO DESIO BRIANZA
IT0001005070	BCO SARDEGNA RISP
IT0001479523	BE
IT0001223277	BEGHELLI
IT0004222102	BIALETTI INDUSTRIE
IT0004095888	BIANCAMANO
IT0003097257	BIESSE
IT0005387995	BIOERA
IT0003217335	BORGOSIESIA
IT0000066123	BPER BANCA
IT0005252728	BREMBO

IT0000066180	BRIOSCHI
IT0004764699	BRUNELLO CUCINELLI
IT0001347308	BUZZI UNICEM
IT0004329733	CAIRO COMMUNICATION
IT0003025019	CALEFFI
IT0003127930	CALTAGIRONE
IT0001472171	CALTAGIRONE EDIT
IT0005252207	CAMPARI
IT0005331019	CAREL INDUSTRIES
IT0001046553	CARRARO
IT0000784154	CATTOLICA ASS
IT0005244618	CELLULARLINE
IT0001128047	CEMBRE
NL0013995087	CEMENTIR HOLDING
IT0003023980	CENTRALE DEL LATTE D'ITALIA
IT0005010423	CERVED GROUP
IT0001446613	CHL
IT0003389522	CIA
IT0000070786	CIR
IT0005117848	CLASS EDITORI
NL0010545661	CNH INDUSTRIAL
IT0005136681	COIMA RES
IT0004105653	CONAFI
IT0004991490	COSE BELLE D'ITALIA
IT0003121677	CREDEM
IT0005319444	CREDITO VALTELLINESE
IT0001127874	CSP INT IND CALZE
LU0290697514	D'AMICO
IT0000076502	DANIELI & C
IT0004053440	DATALOGIC
IT0001431805	DEA CAPITAL
IT0003115950	DE'LONGHI
IT0003492391	DIASORIN
IT0001469995	DIGITAL BROS
IT0001044996	DOVALUE
IT0003372205	EDISON R
IT0001498234	EEMS
IT0005188336	EL.EN.
IT0003404214	ELICA
IT0001237053	EMAK
IT0005176406	ENAV
IT0003128367	ENEL
IT0004356751	ENERVIT
IT0003132476	ENI
IT0005084717	EPRICE
IT0005312027	EQUITA GROUP
IT0001157020	ERG
IT0003850929	ESPRINET
IT0004818297	EUKEDOS
IT0003895668	EUROTECH
NL0012059018	EXOR
IT0001477402	EXPRIVIA
IT0003198790	FALCK RENEWABLES
NL0011585146	FERRARI

NL0010877643	FIAT CHRYSLER AUTOMOBILES
IT0001498481	FIDIA
IT0003365613	FIERA MILANO
IT0004967292	FILA
IT0001415246	FINCANTIERI
IT0000072170	FINECOBANK
IT0000060886	FNM
IT0001487047	FULLSIX
IT0005023038	GABETTI
IT0005345233	GAROFALO HEALTH CARE
IT0004098510	GAS PLUS
IT0001398541	GEDI GRUPPO EDITORIALE
IT0003203947	GEFRAN
IT0000062072	GENERALI ASS
IT0003697080	GEOX
IT0004942915	GEQUITY
IT0005122400	GIGLIO GROUP
IT0005221517	GPI
IT0005311821	GUALA CLOSURES
IT0001250932	HERA
IT0005108219	I GRANDI VIAGGI
IT0001049623	I.M.A.
IT0005322612	IGD
IT0005283111	IL SOLE 24 ORE
IT0005359192	ILLIMITY BANK
IT0001413837	IMMSI
IT0005245508	INDEL B
IT0004552359	INTEK GROUP
IT0001078911	INTERPUMP GROUP
IT0000072618	INTESA SANPAOLO
IT0005090300	INWIT
IT0001077780	IRCE
IT0003027817	IREN
IT0001069902	ISAGRO
IT0003057624	IT WAY
IT0005211237	ITALGAS
IT0003411417	ITALIAN EXHIBITION GROUP
IT0005253205	ITALMOBILIARE
LU0556041001	IVS GROUP
IT0000336518	JUVENTUS FC
IT0001055521	LA DORIA
IT0004210289	LANDI RENZO
IT0003856405	LEONARDO
IT0005107492	LUVE
IT0005013013	LVENTURE GROUP
IT0004931058	MAIRE TECNIMONT
IT0003428445	MARR
IT0005042467	MASSIMO ZANETTI BEVERAGE
IT0001063210	MEDIASET S.P.A
IT0000062957	MEDIOBANCA
IT0001447348	MITTEL
IT0001080248	MOLMED
IT0004965148	MONCLER
IT0001469383	MONDADORI EDIT

IT0001447785	MONDO TV
IT0000066016	MONRIF
IT0004195308	MUTUIONLINE
IT0004819030	NETWEEK
IT0005385213	NEWLAT FOOD
IT0005366767	NEXI
IT0005330516	NOVA RE
IT0001350625	OLIDATA
IT0003683528	OPENJOBMETIS
IT0005138703	ORSERO
IT0005043507	OVS
IT0001467577	PANARIAGROUP
IT0003073266	PIAGGIO
IT0004007560	PIERREL
IT0003056386	PININFARINA SPA
IT0005337958	PIOVAN
IT0004240443	PIQUADRO
IT0005278236	PIRELLI & C
IT0004997984	PITECO
IT0005339160	PLC
IT0001352217	POLIGRAF. S. F.
IT0000086923	POLIGRAFICI EDIT
IT0003796171	POSTE ITALIANE
IT0003124663	PRIMA INDUSTRIE
IT0004176001	PRYSMIAN
IT0005054967	RAI WAY
IT0004724107	RATTI
IT0004931496	RCS MEDIAGROUP
IT0003828271	RECORDATI ORD
IT0001178299	RENO DE MEDICI
IT0005282865	REPLY
IT0005349052	RESTART
IT0004370463	RETELIT
IT0001402269	RISANAMENTO
IT0004297575	ROSSS
IT0003621783	S.S. LAZIO
IT0001042610	SABAF
IT0001029492	SAES GETTERS
IT0004604762	SAFILO GROUP
IT0005252140	SAIPEM
IT0003865570	SALINI IMPREGILO
IT0004712375	SALVATORE FERRAGAMO
IT0003549422	SANLORENZO
IT0000433307	SARAS
IT0005283640	SERI INDUSTRIAL
IT0003814537	SERVIZI ITALIA
IT0004729759	SESA
IT0005262149	SIT
IT0001206769	SOL
IT0003153415	SNAM
IT0000076536	SOGEFI
IT0004607518	STEFANEL
NL0000226223	STMICROELECTRONICS
IT0003153621	TAMBURI

IT0001424644	TAS
IT0005331001	TECHEDGE
IT0005162406	TECHNOGYM
IT0003497168	TELECOM ITALIA
LU0156801721	TENARIS
IT0003242622	TERNA
IT0004585243	TESMEC
IT0005037210	TINEXTA
IT0004513666	TISCALI
IT0004659428	TITANMET
IT0003007728	TOD'S
IT0000214293	TOSCANA AEROPORTI
IT0005390965	TREVI FIN IND
IT0005001554	TRIBOO
IT0001454435	TXT E-SOLUTIONS
IT0003487029	UBI BANCA
IT0005239881	UNIEURO
IT0004810054	UNIPOL
IT0004827447	UNIPOLSAI
IT0005239360	UNICREDIT
IT0001018362	VALSOIA
IT0003127898	VIANINI
IT0004922826	WIIT
IT0004171440	ZIGNAGO VETRO
IT0005395071	ZUCCHI

FREQUENTLY ASKED QUESTIONS ON THE TEMPORARY BAN ON NET SHORT POSITIONS OF 18 MARCH 2020

This is a series of responses to questions on the interpretation of the ban adopted by CONSOB on 18 March 2020. The FAQs may be updated and extended at any time. Please consult the latest version available on the CONSOB's website at the following webpage:

<http://www.consob.it/web/consob-and-its-activities/short-selling>

Version of 18 March 2020

1. Who is subject to the prohibition?

The prohibition applies to any natural or legal person (hereinafter "investor"), irrespective of their country of residence, regardless of whether trading takes place in Italy or in another EU or non-EU country, on a trading venue or over-the-counter ("OTC").

The ban does not affect market making activities.

2. When will the prohibition come into force and how long will it be in force?

The restrictions will apply from the start of the trading day of 18 March 2020 until the end of the trading day of 18 June 2020. The restrictions could be lifted before 18 June 2020 according to market conditions.

3. To which financial instruments does the prohibition apply?

The prohibition applies to shares included in the list attached to the resolution (hereinafter "restricted shares"), as well as to related instruments included in the calculation of net short position, like saving/preferred shares, derivatives, depositary receipts, index-related instruments (see point no. 9 below).

The relevant provisions of Regulation (EU) no. 236/2012 on the calculation of net short position apply (i.e. Article 3 of Regulation no. 236/2012 and Articles 5, 6, 7 and 10 and Annex I and II of Commission Delegated Regulation no. 918/2012 and the relevant ESMA FAQs).

In short, the net short position is the sum of all short positions minus all long positions held by that investor in relation to restricted shares and related instruments.

By means of illustration, positions stemming from the following transactions, among others, shall be considered in the calculations:

- purchases or sales of shares;
- transactions in options, swaps, futures, contracts for difference, covered warrants, certificates.

Financial instruments which entail a bearish position, such as the purchase of put options, shall be considered as short positions.

Positions in derivatives have to be delta adjusted, according to Annex II, Part 1, of Commission Delegated Regulation no. 918/2012.

Fixed income instruments or instruments that give an exposure to the creditworthiness of any share issuers (such as credit default swap) shall not to be taken into account.

Borrowed or lent securities are not included in the calculation of the position. In particular, securities lending transactions whereby shares are lent shall not be considered as creating a short position for the lender. On the other hand, securities lending transactions whereby shares are borrowed shall not be considered as a long position for the borrower.

Special provisions apply to short positions backed by long positions in subscription rights and convertible bonds (see also point no. 12 below).

4. What does the investor need to check before entering into a transaction in relation to the restricted shares or related instruments?

The investor must ascertain that the intended transaction in the financial instrument does not create or increase a net short position in a restricted share. Special care must be taken when dealing in derivatives since positions shall be accounted on a delta-adjusted basis.

5. Are intraday net short positions allowed?

No, creating or increasing a net short position (whatever the type of transactions used) during the trading day is prohibited, even if the investor intends to close the position before close of business on that day.

6. What should be done by an investor who opened a net short position before the entry into force of the prohibition?

The prohibition only refers to creating or increasing a net short position. Therefore, the investor who opened a net short position before the entry into force of the prohibition can reduce it or keep it. Keeping a previous net short position unaltered does not infringe the prohibition. On the other hand, increasing a position after having reduced it is not allowed.

In case an investor had placed an order that is not executed by the time the prohibition has entered into force and, if executed, would create or increase a net short position, the investor must cancel that order.

See also point no. 8 regarding derivative instruments.

7. Does the prohibition apply to transactions in the concerned financial instruments executed outside an Italian market?

Yes, the prohibition applies regardless of the trading venue where the transaction is executed if it results in creating or increasing a net short position in a restricted share. Therefore, it applies to transactions carried out on a regulated market or an MTF within and outside Italy. Similarly, the prohibition applies to OTC transactions.

8. Is an investor allowed to create a net short position in a restricted share by using derivatives?

No, investors are not allowed to use derivatives to create or increase a net short position; they may only use derivatives to hedge, create or increase a net long position.

However, in case a net short position is increased passively due to a variation of the relevant delta, this is not considered an infringement to the prohibition.

Investors holding a net short position in a restricted share through expiring derivatives are not allowed to roll forward their position.

9. Are trades in index-related instrument that contain one or more restricted shares allowed?

Trading in index-related instruments (like futures and other derivatives, ETFs, certificates) is not affected by the restriction if the overall weight of the restricted shares in the index is equal to or lesser than 20%.

At the opposite, trading in index-related instruments is affected by the restriction when the overall weight of the restricted shares in the index is greater than 20%.

However, creating or increasing a net short position in a restricted share by combining transactions in index-related instruments and other transactions is prohibited. For instance, it is prohibited to implement a strategy consisting in:

- selling futures contracts on an index whose underlying basket includes restricted shares, and
- buying futures contracts on all/most of the securities included in the underlying basket of the index except for restricted shares.

It is up to each investor to be able to prove that the transactions on index -related instruments are not carried out to enter into short strategies over restricted shares and circumvent the restrictions.

Please note that if, due to index trading, a net short position in a restricted share reaches a relevant threshold (i.e. 0.1%, 0.2%, 0.3%, 0.4% of the issued share capital and so on), the position holder has the obligation to notify to Consob the change in the net short position. In this case, it is recommended that the position holder clarifies, in the field "comments" of the notification, that the variation in the position has been caused by index trading.

Please note that, following ESMA Decision of 16 March 2020, the minimum threshold for net short positions reporting of shares admitted to trading on a regulated market has been lowered to 0.1% of the share capital.

10. If a fund manager acts on behalf of multiple funds, should the calculation of the net short position be made at the fund-specific or manager level or both? What about groups?

The rules provided for in Regulation no. 236/2012 apply. Thus, the calculation has to be performed at the level of the managing company. In case of groups, the calculation has to be done both at the individual entity level and at the group level.

11. Are market makers exempted?

Yes, market making activities as defined by Article 2(1)(k) of Regulation No. 236/2012, are exempted from the ban, provided that the entity performing the market making activity is included in the list published by ESMA.

12. Can you clarify the treatment of subscription rights and convertible bonds?

As provided for in Consob Resolution, the restrictions do not apply to the creation of, or increase in, net short positions in a restricted share when the short position is aimed exclusively at covering the risk stemming from the equity component of convertible bond previously purchased which convert in that restricted share.

The same exemption applies to short positions in a restricted share aimed at covering the risk stemming from subscription rights previously purchased which give the right to subscribe restricted share yet to be issued.

This means that, for instance, an investor can buy subscription rights or convertible bonds and sell a corresponding number of underlying shares.

In determining the corresponding number of shares, the investor must calculate and apply the relevant delta (see point no. 3 above). Subscription rights and convertible bonds which have been exercised by the investor have a delta equal to 1.

In both cases, the investor should report to Consob the net short position stemming from such risk hedging activity. In this case, it is recommended that the investor clarifies, in the field "comments" of the notification, that the short position is backed by long positions in subscription rights or convertible bonds.

Please note that, following ESMA Decision of 16 March 2020, the minimum threshold for net short positions reporting of shares admitted to trading on a regulated market has been lowered to 0.1% of the share capital.

13. Enforcement – What would be the consequences of non-compliance with the prohibition?

According to Article 193-ter of the Italian Consolidated Law on Finance, anyone who breaches the measures adopted by competent authorities pursuant to Articles 20 of the Regulation no. 236/2012 can be fined from 25,000 euro to 2,500,000 euro. The fines can be increased depending on the personal qualities of the guilty subject, the entity of the product or profit gained by the illicit fact or by the effects produced on the market. The application of the fines entails the confiscation of the product or profit gained by the illicit fact.

Any additional question can be sent to: shortselling-service@consob.it.