X-pand into the Future

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Empfänger: Alle Handelsteilnehmer der Eurex Deutschland und Eurex Zürich sowie Vendoren
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Deutsche Aktien- und Schuldtitel-Basiswerte: Weltweites Verbot von ungedeckten Leerverkäufen am 27. Juli 2010 in Kraft getreten

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Zielgruppe:

- Front Office/Handel
- Middle + Backoffice
- Revision/Security Coordination

Anhang:

Xetra-Rundschreiben 088/10 vom 26. Juli 2010

Zusammenfassung:

Der deutsche Gesetzgeber hat ungedeckte Leerverkäufe in an einer deutschen Börse zum Handel zugelassenen

- Aktien-Basiswerten und
- Schuldtitel-Basiswerten (denominiert in Euro)

sowie in bestimmten Kreditderivaten mit Wirkung zum **27. Juli 2010** untersagt. Untertägige ungedeckte Leerverkäufe sind erlaubt. Transparenzvorschriften für Netto-Shortpositionen werden nach einer 20-monatigen Übergangsphase am 26. März 2012 in Kraft treten.

Das weltweit gültige Verbot hat keinerlei Auswirkung auf Eurex-Produkte.

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Deutsche Aktien- und Schuldtitel-Basiswerte: Weltweites Verbot von ungedeckten Leerverkäufen am 27. Juli 2010 in Kraft getreten

Gestern ist im deutschen Bundesgesetzblatt Nr. 38 das „Gesetz zur Vorbeugung gegen missbräuchliche Wertpapier- und Derivategeschäfte“ verkündet worden. Dieses Gesetz ist am 27. Juli 2010 in Kraft getreten.

Entsprechend den neuen gesetzlichen Regelungen zu Leerverkäufen in deutschen Aktien, Schuldtiteln und Kreditderivaten müssen Händler im Kassamarkt insbesondere das weltweite Verbot für ungedeckte Leerverkäufe in deutschen Aktien beachten (wobei untertägige ungedeckte Leerverkäufe erlaubt sind). Gemäß der deutschen Bundesanstalt für Finanzdienstleistungsaufsicht BaFin sind Ausnahmen für Designated Sponsors, Liquidity Providers sowie für Skontroführer und Specialists für betroffene Werte vorgesehen. Umfassende Meldepflichten von Leerverkaufspositionen treten nach einem Übergangszeitraum von 20 Monaten am 26. März 2012 in Kraft – bis dahin bleibt die aktuelle BaFin-Verordnung vom 4. März 2010 bestehen.

Das weltweit gültige Verbot hat keinerlei Auswirkung auf Eurex-Produkte.

Im Anhang finden Sie – in englischer Sprache – nähere Informationen zum Gesetz in einem Informationsblatt und in einem FAQ. Mit diesem Zusatzservice schließen wir eine potentielle Informationslücke, die insbesondere bei unseren internationalen Kunden entstehen könnte.

Frankfurt, 27. Juli 2010

Xetra-Rundschreiben 088/10

Aktion erforderlich! Hohe Priorität!

An die Xetra®-Teilnehmer und Vendoren

Empfänger: Benannte Personen, Handel, Zentrale Koordinatoren, Sicherheitsadministratoren, Systemadministratoren, Allgemein

26. Juli 2010

Weltweites Leerverkaufsverbot in deutschen Aktien tritt am 27. Juli 2010 in Kraft

Sehr geehrte Damen und Herren,

heute ist im Bundesgesetzblatt Nr. 38 das „Gesetz zur Vorbeugung gegen missbräuchliche Wertpapier- und Derivategeschäfte“ verkündet worden. Dieses tritt am Dienstag, den 27. Juli 2010 in Kraft.

Bitte beachten Sie die neuen gesetzlichen Regelungen zu Leerverkäufen in Aktien, Renten und Kreditderivaten, insbesondere das weltweite Verbot für ungedeckte Leerverkäufe in deutschen Aktien (wobei untertägige ungedeckte Leerverkäufe erlaubt sind). Ausnahmen für Designated Sponsors, Liquidity Providers sowie für Skontroführer und Specialists für betroffene Werte sind gemäß BaFin vorgesehen – eine entsprechende Meldung ist unverzüglich an die BaFin zu tätigen. Einzelheiten hierzu sowie ein entsprechendes Meldeformular für besagte Ausnahmen finden Sie auf der BaFin-Website http://www.bafin.de

Umfassende Meldepflichten von Leerverkaufspositionen treten nach einem Übergangszeitraum von 20 Monaten in Kraft – bis dahin bleibt die aktuelle BaFin-Verordnung vom 4. März 2010 bestehen.

Nähere Informationen zum Gesetz haben wir – in englischer Sprache – in einem beiliegenden Informationsblatt zusammengestellt sowie ein FAQ erstellt. Mit diesem Zusatzservice schließen wir eine potentielle Informationslücke, die insbesondere bei unseren internationalen Kunden entstehen könnte.

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Anlagen
Xetra client information on German short sale regulation
Xetra FAQ on German short sale regulation

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Xetra Client Information

German Short Sale Regulation

Allows intraday naked short selling and facilitates transparency

New German law to regulate short sales

A new regulation has been put in place in Germany to regulate short sales. The *Abusive Securities- and Derivatives Trades Prevention Act*[1] will step into force on 27 July 2010. The Act provides changes to the *Securities Trading Act* (*Wertpapierhandels-gesetz*, WpHG).

The Act replaces the current General Decree of the Federal Financial Supervisory Authority (BaFIN) to prohibit naked short selling transactions of 18 May 2010. The General Decree on the introduction of a transparency obligation for net short-selling positions of BaFin of 4 March 2010 remains in place for the interim period of 20 months.

This note summarizes the main changes that are relevant for Xetra clients. It does not cover provisions on credit derivatives outlined in §30j WpHG. It does not cover provisions that empower BaFIN to conduct appropriate measures to protect the functioning of financial markets outlined in §4a WpHG.

Naked shorting of German shares banned globally

Naked short sales in shares or government[2] bonds (denominated in Euro) admitted to trading on a German exchange **are banned** (new §30h WpHG). The ban does not apply to shares of companies domiciled abroad.[3] The ban applies **globally, and irrespective of the trading venue.**

A 'naked short sale' applies when – at the **end of the day** when the trade was conducted – the seller

- is not the owner of the sold securities and
- does not have any unconditionally enforceable claim under the law of obligations or under property law for the transfer of title in a corresponding number of securities of the same kind.

Reporting of short positions required

(Covered) Net short positions in shares admitted to trading on a German exchange must be reported to the BaFIN until the end of the next trading day, if the net short position exceeds 0.2% of outstanding shares (new §30i WpHG).

If the net short position exceeds 0.5% of outstanding shares, the position must also be reported to the public via the Electronic Federal Gazette within said period.

Changes in the net position that exceed said thresholds in ±0.1% steps must be reported accordingly.

A 'net short position' applies when the net position of all financial instruments related to an issuer results in a short economic exposure to its owner.

Exemptions

Exemptions from the ban and the transparency obligations apply (§30h (2) sentence 1 and §30i (4) WpHG) to firms providing investment services, if they

- trade on own account on a regular and permanent basis, or
- fill client orders on a regular and permanent basis and hedge the resulting positions

and if the respective transaction is related to this business. BaFIN must immediately be given notice about the intent to take on these activities, whereas the affected instruments must be declared.

Exemptions from the ban apply (§30h (2) sentence 2) to transactions which trading participants conclude with the customer for settlement of a transaction in financial instruments at a fixed or definable price (fixed price transaction).

Fines

Not obeying these rules shall be deemed as an administrative offence and will be punished with a fine of

- up to 500.000 Euro for naked short selling,
- up to 200.000 Euro for not obeying transparency provisions.

Entry into force and Grandfathering clause

The ban is effective as of 27 July 2010. The ban does not apply to transactions conducted before the effective date, unless these are prohibited by a different rule.

The transparency requirement becomes effective on 26 March 2012. Net short positions that have been created before the effective date must be reported the day following the effective date, unless they have been reported earlier.

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Frankfurt am Main, 26 July 2010

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1 *Gesetz zur Vorbeugung gegen missbräuchliche Wertpapier- und Derivategeschäfte*

2 The term 'Government' includes national, regional, and local administrative units.

3 Except if the company is solely admitted to trading on a German exchange.

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Xetra Client Information

Short Selling FAQ

GENERAL QUESTIONS

Why is the regulation reintroduced?

The financial crisis has shaken confidence in the financial markets and increased the pressure for further substantial improvements to financial supervision. The expansion of the turbulence on the markets for government bonds of the EU Member States and the volatility of the euro reached a new dimension. It is therefore necessary to prohibit certain transactions that potentially aggravate the crisis and enhance transparency to these transactions.

How is the new regulation different to the existing one?

The *Abusive Securities- and Derivatives Trades Prevention Act* replaces the current General Decree of the Federal Financial Supervisory Authority (BaFIN) to prohibit naked short selling transactions of 18 May 2010.

The General Decree on the introduction of a transparency obligation for net short-selling positions of BaFIN of 4 March 2010 remains in place for the interim period of 20 months.

What are the changes regarding the ban?

Naked short sales in shares or government bonds (denominated in Euro) admitted to trading on a German exchange are banned. The ban does not apply to shares of companies domiciled abroad. The ban is effective as of 27 July 2010.

What are the changes regarding short position reporting?

Net short positions in shares must be reported to BaFIN and the public, once they exceed certain thresholds. The reporting requirement becomes effective on 26 March 2012.

What does the regulation cover, especially with respect to derivatives, swaps/CFDs, etc.?

The ban covers shares, government bonds, and certain credit derivatives (especially CDS) (new §30j WpHG).

To whom does the regulation apply – German companies only?

All naked short sales in shares or government bonds (denominated in Euro) admitted to trading on a German exchange are banned. The ban thus includes German shares, and bonds of the German government (new §30h WpHG), if they are listed on a German exchange. The ban also includes such credit derivatives where the contract has been constituted in Germany, unless the short position serves to hedge an existing risk.

Where does the regulation apply?

The regulation is valid world-wide.

Does the regulation apply to, e.g., trades on an MTF outside Germany?

Yes.

BAN-RELATED QUESTIONS

Will the naked short ban include intraday positions?

No. Only positions that are held at the end of the day are relevant. Within a trading day you are allowed to be uncovered short.

Is the ban applicable to naked intraday shorting (for purposes of Market Making) as well as naked overnight shorting?

Within a trading day everybody is allowed to be uncovered short. Naked short positions that are transferred to the next trading day are not allowed. Exemptions for liquidity provisioning activities exist (see below).

Do trading activities – where a buy and sell order are placed simultaneously, and the sell order is executed first – result in an illegal naked short sale?
This activity is allowed as long the naked short position is closed until the end of the day.

Do we have to show we have the borrow, and whether we have to tag the short sale orders?
No. The law does not contain provisions regarding evidence of borrowing. The law does not foresee tagging of individual short sale orders in a US style 'uptick rule'.

Is covered shorting allowed?
Yes. Everybody is allowed to create covered short positions and transfer these across trading days.

Are we allowed to short, if we enter into a pre-borrowing agreement with our clearer?
Yes,. Covered short sales are not subject to the ban.

How long is the ban expected to be in place?
The ban will be a permanent one. However, the German government has indicated to adapt the law accordingly once an EU-wide regulation is in place.

POSITION REPORTING-RELATED QUESTIONS

Is there any reporting necessary?
(Covered) Net short positions in shares admitted to trading on a German exchange must be reported to the BaFIN until the end of the next trading day, if the net short position exceeds 0.2% of outstanding shares.

In addition, if the net short position exceeds 0.5% of outstanding shares, the position must also be reported to the public via the Electronic Federal Gazette within said period.

Changes in the net position that exceed said thresholds in ±0.1% steps must be reported accordingly.

A 'net short position' applies when the net position of all financial instruments related to an issuer results in a short economic exposure to its owner. (new §30i WpHG)

When do I have to start with short position reporting?
The reporting requirement starts after an interim period of 20 months on 26 March 2012.

EXEMPTIONS-RELATED QUESTIONS

Are liquidity providers, such as market makers, designated sponsors etc. exempt from the ban?
Yes. Exemptions from the ban apply (§30h (2) sentence 1) to firms providing investment services, if they

- trade on own account on a regular and permanent basis, or
- fill client orders on a regular and permanent basis and hedge the resulting positions

and if the respective transaction is related to this business. BaFIN must immediately be given notice about the intent to take on these activities, whereas the affected instruments must be declared.

These exemptions include, inter alia, market makers, Designated Sponsors, Liquidity Providers, Skontroführers, Specialists, and other comparable market participants – if the respective short sale is related to this business.

Exemptions from the ban apply (§30h (2) sentence 2) also to transactions carried out on the basis of a fixed price with a client.

Are liquidity providers, such as market makers,

designated sponsors etc. exempt from the reporting requirement?

Exemptions from the transparency requirement apply (§30i (4) WpHG) to firms providing investment services, if they

- trade on own account on a regular and permanent basis, or
- fill client orders on a regular and permanent basis and hedge the resulting positions

and if the respective transaction is related to this business. BaFIN must immediately be given notice about the intent to take on these activities, whereas the affected instruments must be declared.

How do we apply for an exemption of the short selling rules?

An explicit application is not necessary. However, BaFIN must immediately be given notice about the intent to take on these activities, whereas the affected instruments must be declared (WpHG 30h (2) sentence 3; 30i (4) sentence 2; and 30j (3) sentence 2).

RESPONSIBILITY, FINE-RELATED QUESTIONS, AND ENFORCEMENT

What are consequences if we fail to cover short positions until the end of the day?

Not obeying these rules shall be deemed as an administrative offence and will be punished with a fine of up to 500.000 Euro for naked short selling.

Who is ultimately responsible in supervising compliance with the new law?

Any seller of securities is responsible for his own business.

How is the law going to be enforced globally?

BaFIN will enforce the regulation in Germany. In other jurisdictions, BaFIN will seek the administrative assistance of the respective national Competent Authorities.

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