

**Frequently asked questions on the Decisions taken by the AMF on 17 March and 14 April 2020
pursuant to Article L. 421-16 II of the Monetary and Financial Code:
Ban on net short positions**

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This is a series of responses to questions on the interpretation of the ban adopted by the AMF on 17 March 2020 and the decision of its renewal on 14 April 2020. The FAQs may be updated and extended at any time. Please consult the latest version available on the AMF's website.

Please note that the AMF will update its FAQ when a matter raised is of general interest but will not address any questions related to market participants' individual circumstances.

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

Any identified breach of the Decision and of the terms of its implementation (as specified therein) may be subject to an enforcement action by the AMF and to sanctions pursuant to French law.

1 - To which financial instruments does the prohibition apply?

The prohibition applies to any share admitted to trading on a French trading venue regulated by the AMF as long as its most liquid market is located in France. In practice, the ban applies to a share if:

- the share does not appear in the exempt securities register (link to [Exempted shares Register](#));
- the relevant competent authority (RCA) of the share in Europe is FR (link to [FIRDS](#)).

For informational purposes, a list of the shares concerned by the ban is provided on the website of the AMF (link to [List](#)). The AMF cannot provide any warranty that the content available is complete, exact or up to date. Given the various underlying data sources, changes may be published regularly.

The creation or increase of a net short position may involve financial instruments other than shares, e.g.:

- saving/preferred shares,
- index-related instruments,

Positions relating to financial instruments traded on the cash market, including funds whose return replicates the return or the reverse return of an index mainly composed by shares concerned by the ban shall be taken into account when determining the net position.

See Q8 & Q9 for details

- listed and OTC derivatives – including futures, options, contracts for difference, swaps,

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

- depositary receipts such as ADRs and GDRs,

With regard to certificates representing shares such as ADRs, it is important to clarify that the ban does not apply to short positions in ADRs as such or considered individually, but only when they represent short positions in the underlying share, taking into account the total position of the holder of the ADR.

- covered warrants, certificates and any structured product whose effect is to create a net short position in a share subject to the ban.

Shortly, 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, ADR, ...

Finally, notwithstanding Article 3 of SSR, convertible bonds and subscription rights shall be taken into account in the calculation of a net short position for the purposes of the implementation of the Decision.

However, fixed income instruments or instruments that give an exposure to the creditworthiness of any share issuers (such as credit default swap) shall not be taken into account. Financial instruments that were borrowed under a loan transaction shall not be taken into account.

2 - Following the publication of the Decision, what does an investor need to check before entering into a transaction?

Before selling any of the securities concerned, the investor must make sure that the quantity of securities sold does not create or increase a net short position.

Before entering into a transaction on a derivative where the underlying is any of the securities or a basket/index composed in majority¹ of these securities, the investor must make sure that the transaction does not create or increase a net short position.

3 - 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.

4 - How will this Decision affect SRD (deferred settlement system) in the securities concerned?

It is forbidden to take a new short SRD position or to increase an existing short SRD position. Persons holding short SRD positions expected to expire at the end of March can extend them on the expiration of April, **and where relevant on the expiration of May.**

SRD long positions are not affected by the new measures. They can be unwound through an SRD sale order.

5 - Is an investor allowed to create a net short position in one of the securities concerned by using derivatives?

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

Net short positions taken before the publication of the Decision are not affected. In addition, investors whose existing short position leads to a creation or an increase of a net short position solely as a result of the variation in volatility are not required to reduce their exposure²: keeping a previous net position unaltered does not infringe 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 ban can reduce it or keep it. On the other hand, increasing a position after having reduced it is not allowed.

The AMF admits that investors holding a net short position in relation to one of the securities concerned through expiring derivatives are allowed to roll forward their position, even if such a rolling results in the creation of a net short position with a further expiry date, provided that the net short position so created does not exceed the one held previously.

5 bis – What about investors holding a mixed position through a portfolio of equities and through derivatives?

An investor holding a long position via a portfolio of shares can hedge his portfolio by taking a short position on an index derivative under the conditions specified in § 8. However, he cannot sell his equity portfolio without simultaneously unwinding his index derivative short position.

In addition, an investor holding a long position through derivatives hedged through a short position in a share subject to the ban has to care about the expiry of the long position: at the expiry of the long position offsetting the short position, the investor would be creating a net short position. In this case, this new net short position would not be considered an unexpected short position. Since the investor does not decide to close its two opposite positions of the same strategy, he is consciously taking a new net short position in these shares. Therefore, in order to avoid breaching the prohibition the investor should keep its long position and the relevant hedge or alternatively close both positions.

The above will not apply where all the positions composing a hedge or a strategy have been built before the entry into force of the prohibition.

¹ See question 6 and 7 for more details on index derivatives and ETFs.

² However, the crossing of a reporting threshold (0,1% following ESMA's decision of 16 March 2020 and all additional 0,1%) due to the variation in volatility remains subject to the reporting obligations.

6 - What should be done about orders in the order book that are not executed when the Decision is published if executing them would initiate or increase a net short position?

The investor shall cancel the orders in question.

7 - Could you clarify the exceptions mentioned regarding market making activities?

The exception from the ban regarding market-making activities only applies to market makers as defined under article 17 of the SSR.

This exemption also applies to the transactions that an investment firm carries out for the purpose of hedging the positions related to the activities as defined above.

This exemption does not apply to the activities that an investment firm conducts on own account in a capacity other than a capacity of market maker or liquidity provider.

Any investment firm claiming to be exempted under the Decision must at all times be in a position to respond to any request by the AMF and in particular, to produce any and all necessary elements to demonstrate its compliance with the abovementioned requirements and conditions. In any event, provided the abovementioned conditions are met, the AMF does not anticipate observing any substantial intraday net short position.

8 - Are trades in index derivatives allowed where the basket of securities includes one or more of the securities concerned?

Generally speaking, trades in index derivatives should be taken into account when computing the net position on each share affected by the ban.

However, an investor who holds a long position of shares strongly correlated to an index such as the CAC 40, may hedge its general market risk through a CAC40 derivative even if its portfolio includes only a limited number of CAC 40 shares or even none. The AMF would admit such hedging when:

- the portfolio, or part of it, is diversified and consists of shares concerned by the ban;
- the value of the portfolio, or part of it, is significantly and reliably correlated to the price level of the index derivative;
- the nominal of the hedge is proportionate to the nominal of the portfolio (or a part of it if only a part of the portfolio is hedged);
- the transactions on the index derivative are not carried out to enter into short strategies over restricted shares and circumvent the restrictions.

In addition, the creation or increase of net short positions through indexed financial instruments or baskets of shares are excluded from the ban when the shares subject to the Decision represent less than 50% of the composition of the index or basket.

In all cases, taking a net short position in one or more of the securities concerned by combining index derivative transactions 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 one or more of the securities concerned, and
- buying futures contracts on any of the securities included in the underlying basket of the index except for the concerned securities.

It is up to each investor to be able to evidence that the transactions on index-related instruments are not carried out to enter into short strategies over restricted shares and circumvent the restrictions. In case of doubt, the AMF recommends to abstain from assuming short positions in such index-related instruments.

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 the AMF 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.

9 - Is an investor allowed to buy shares/units of a fund which replicates the reverse return of an index whose basket includes one or more of the securities concerned such as a reverse Exchange-Traded Fund (Reverse ETF)?

Notwithstanding Article 3 of SSR, in accordance with article 2 of the Decision, investors must take into account the positions they hold through the funds they have invested in. As a consequence thereof, they have to make sure that any investment in a fund that replicates the reverse return of an index whose basket mainly composed by shares included in the ban does not result in the increase of their net short position in relation to each of the securities concerned. Shortly, the same principles as those detailed in Answer 8 apply.

Finally, in the case a fund is to replicate, pursuant to its investment policy, the reverse return of an index whose basket includes one or more of the securities concerned³, the increase of a net short position in relation to each of the securities concerned is not considered by the AMF as a breach of its Decision on the part of the fund's manager.

10 - Is an investor allowed to sell in advance the securities that are to be withdrawn from or added to the composition of the underlying basket of an index in anticipation of the rebalancing of the said index?

Some investors have set up strategies, either on own account, or on behalf of third parties, which consist in replicating the performance of an index. In particular, strategies on own account often consist of an arbitrage between the performance of the underlying basket of securities and the related futures contracts. On the other hand, strategies used on behalf of third parties generally aim at providing the performance of an index to an asset manager which itself provides the same performance to its clients.

However, when the composition of the underlying basket of an index is amended, the investors who have built an equity portfolio replicating the performance of the said index have to adjust their portfolio accordingly. Notably, the hedging through the holding of the securities being withdrawn from the composition of the index becomes useless at the closing of the trading session preceding the date on which the relevant index amendment becomes effective.

A market practice consists in portfolio readjustments smoothly made during the days preceding the index rebalancing, at the risk of resulting in an imperfect hedging: the investors concerned justify their practice by the need, whether real or apparent, not to excessively impact the determination of the closing fixing price. Such a practice is nonetheless contrary to the provisions which prohibit investors from taking net short positions in relation to the securities mentioned in the Decision. Indeed, the sale of the securities concerned in anticipation of an index rebalancing creates a net short position.

Considering the likely impact of the rebalancing of indices on the price of the financial securities concerned by the ban, the AMF will admit that investors who replicate the performance of an index subject to a rebalancing may sell the securities concerned in anticipation even if such sales result in the temporary creation of a net short position. This tolerance will only apply during the last trading session before the relevant index rebalancing becomes effective.

For the purpose of benefitting from the exemption, the investors concerned must be in a position to demonstrate to the AMF that the net short positions so created:

- are justified by the need to adjust an index-based portfolio pursuant to the amendments made to the composition of the relevant index;
- are closed at the latest at the end of the trading session preceding the date on which the index rebalancing becomes effective.

If need be and on an *ex-post* basis, the AMF will closely monitor compliance with the above conditions.

11 - How does the Decision affect arbitrage operations linked to public offer?

Arbitrages on shares subject to an OPA or an OPE may lead an investor to create a net short position on a share on which the Decision applies. Such arbitrages do not benefit from an exemption to the Decision.

For instance, when the issuer A proposes in the context of a public offer to redeem its shares against those of issuer B, the ban applies to an investor who intends to sell shares A and to buy the same amount of shares B when the operation leads to a creation or increase of a net short position on share A.

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

As provided for in the Decision, 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. 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 the AMF any 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

³ This implies that the fund's manager has no discretion or only a limited one as regards the fund's investments.

13 - 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?

The ban applies on a fund-by-fund basis.

14 – For entities belonging to a group, should the calculation of the net short position be made at the entity level or group level or both?

The prohibition applies to any natural or legal person, irrespective of their country of residence, regardless of whether trading takes place in France or in another EU or non-EU country, on a trading venue or over-the-counter ("OTC"). Accordingly, it applies at the entity level, even for an entity belonging to a group: with the exception of entities benefitting from a market making exemption, an entity is prohibited to create or increase a net short position on a share subject to the ban.

Questions about the practical implementation of this Decision can be sent to:

shortban@amf-france.org