

Capital Markets Alert

Client Letter

v. BOETTICHER HASSE LOHMANN

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BaFin prohibits naked short selling in and contracting uncovered CDS on government bonds of the Euro zone as well as short selling in certain financial sector shares

BaFin decrees prohibit naked short selling in and contracting uncovered CDS on government bonds of the Euro zone as well as short-selling in certain financial sector shares

1. On the evening of May 18, 2010 the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin*) issued a temporary prohibition on **uncovered short sales of debt securities issued by Euro zone countries and admitted on a German exchange** to trading on the regulated market. Exemptions exist for market makers and transactions hedging existing risk positions.
2. It also temporarily prohibited credit default swaps (CDS) in which the reference liability is at least among others a liability of a Euro zone country and is not used to hedge default risks (**uncovered CDS**).
3. Simultaneously, *BaFin* prohibited naked short-selling transactions in the shares of the following **companies from the financial sector**:

- AAREAL BANK AG
- ALLIANZ SE
- COMMERZBANK AG
- DEUTSCHE BANK AG
- DEUTSCHE BÖRSE AG
- DEUTSCHE POSTBANK AG
- GENERALI Deutschland HOLDING AG
- HANNOVER RÜCKVERSICHERUNG AG
- MLP AG
- MÜNCHENER RÜCKVERSICHERUNGSGESELLSCHAFT AG

Again market makers are exempted from the general prohibition. Following the recent *BaFin* decree dated March 4, 2010 on the mere disclosure of net short selling positions in such companies of the financial sector (see vBHL - Capital Markets Update - March 2010) *BaFin* now returns to a general prohibition on short selling in such instruments.

If you would like to know more about any of the subjects covered in this publication or our services, please contact:

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All of the three general decrees apply from 19 May 2010, 00.00 hrs., to 31 March 2011, 24.00 hrs, and will be reviewed on an ongoing basis.

BaFin justified this move by the extraordinary volatility of debt securities of countries from the Euro zone.

Moreover, the spreads of credit default swaps on credit default risks of several countries of the euro zone had widened considerably. In this context, massive short selling of the debt securities concerned and the conclusion of uncovered CDS on credit default risks of euro zone countries were resulting in further excessive price movements which could result in further serious disadvantages for the financial market and could jeopardise the stability of the financial system as a whole.

Useful links:

BaFin decrees on prohibition of naked short selling and uncovered CDS:

http://www.bafin.de/clin_171/nn_720788/SharedDocs/Mitteilungen/EN/2010/pm_100518_cds_leerverkauf_allgemeinverfuegungen_en.html

Key contact:

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This Client Letter is intended to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact the person named under "Key Contact", or your usual contact at v. Boetticher Hasse Lohmann.

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