

# Turkish short selling - rules reminded

*September 2020*



## Short selling defined

Short selling means to borrow certain securities and to sell them in the hope of buying them back later at a lower price and pocketing the difference after closing open position with borrowed securities. It is legal but speculative in nature, as short sellers bet on, and profit from, a drop in a security's market price.

Short selling under Turkish securities law is defined as selling, or giving a sale order for, securities that are not actually owned. If settlement obligation is closed through borrowing, this is also deemed as short selling.<sup>1</sup>

This is a clear definition and provides that, save for *de facto* exemptions on a case by case basis, even though the investor owns sufficient number of shares at the time of order to cover a sale, such sale may still be deemed as short selling if a sale is settled through borrowing.

## Notification requirement

An investor must notify the Turkish broker in writing if it is giving a short selling order. Oral notification is also acceptable if such is allowed under specific rules of the Turkish Capital Markets Board, the CMB. Even if there is not a notification on short selling by the investor, the sale will be deemed as short sale if the shares do not exist in the account of the investor at the time of sale order or if the settlement of shares takes place through borrowing.<sup>2</sup> The Turkish broker is required to flag to Borsa Istanbul any short selling notification received from the investor or any deemed short selling order which is found out by Turkish broker.

However, if the investor communicates by any means (fax, telephone, electronic means or similar) to the Turkish broker that it is in a position to make the securities available to the Turkish broker until the settlement, then such sale will not be deemed as short sale. A good example for this would be a communication by the

<sup>1</sup> Paragraph 1 of Article 24 of the CMB Communique V, 65

<sup>2</sup> Paragraph 2 of Article 24 of the CMB Communique V, 65

investor for specific naked short selling to be covered through shares purchased during the trade date, right before giving the short selling order.

This safe harbour, however, does not apply to borrowed transactions in any circumstances. In other words, even if securities exist in the account of an investor at the time of order, such sale will have to be notified by the investor as short sale if the sale will be covered through a borrowing. Therefore, any communication that will be sent to the Turkish broker referring to a covering through borrowing will not make such transaction a long sell. The investor is responsible from precision or correctness of this statement, and the Turkish broker is liable to check and confirm whether such statement communicated by the investor is correct.<sup>3</sup>

### **Consequences of short selling**

As mentioned above, short selling would be deemed as a speculative order in nature, because the investors take action based on a forecast and analysis over specific securities listed on Borsa Istanbul. Speculation is not illegal as long as it does not bear the elements that may cause Borsa Istanbul to take precautionary measures and that results the CMB to start investigation to see whether such short selling action amounts to breach of short selling rules or qualifies as market abuse.

### **Precautionary measures of Borsa Istanbul**

Borsa Istanbul is empowered to take measures against the investors and/or the securities in relation to the events and actions that are listed in the regulation of Application of Surveillance Measures in Markets of Borsa Istanbul (Code 9.YÖN.01) issued by Borsa Istanbul on 14 March 2019. Such list is not exhaustive and one of the listed actions clearly refers to short selling which provides that Borsa Istanbul can take measures if realisation of healthy market is prevented through such selling transactions. The measures are not exhaustive either and include short selling bans against investors for up to six months and/or introduction of price uptick in short sellings for up to three months.

### **Sanctions of Capital Markets Board (CMB)**

Capital Markets Law No. 6362 (“CML”) sets forth activities that require imposition of administrative monetary fines. Below is a brief summary of such provisions that are relevant to short selling.

#### ***Breach of short selling rules***

Noncompliance with the secondary legislation, standards, forms and decisions based on the CML shall be sanctioned with an administrative monetary fine from TRY 46,958 (approx. USD 7,000) up to TRY 1,586,969 (approx. USD 212,000)<sup>4</sup>. However, in cases where a benefit has been gained due to such violation, the amount of the administrative fine cannot be less than twice of such benefit.

If the perpetrator is a legal entity, the CMB, by taking into account the nature of the breach and the number of victims so affected, may impose an administrative fine amounting up to 20% of the pre-tax profit or 1% of the gross sales revenue of such legal entity as per its annual financial statements.

On this basis, the breach of short selling regulations issued by the CMB as secondary legislation<sup>5</sup> and/or actions against the decisions of the CMB in relation to short selling will fall within this category and will be subject to administrative monetary fine.

<sup>3</sup> Paragraph 3 of Article 24 of the CMB Communique V, 65

<sup>4</sup> Article 103 of the CML. Note that these numbers are updated each year by the CMB.

<sup>5</sup> CMB Communique V, 65

**Market abuse**

Actions and transactions which cannot be explained with a reasonable economic or financial justification that deteriorate the functioning of exchange markets and other organized markets, openness and stability shall be deemed as market abuse actions provided that they do not constitute a crime. The persons who commit a market abuse action shall be sanctioned with a monetary fine from TRY 46,958 (approx. USD 7,000) up to TRY 1,175,029 (approx. USD 157,000)<sup>6</sup>.

<sup>6</sup> These numbers are updated each year by the CMB.

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