

SHORT SELLING (NO 2) INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 119 (The code);
 - (2) section 121 (Codes: procedure);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 19 September 2008.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Market Conduct sourcebook (MAR) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Short Selling (No 2) Instrument 2008.

By order of the Board
18 September 2008

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

disclosable short position a net short position which represents an economic interest of one quarter of one per cent or more of the issued capital of a ~~company~~ company.

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net short position a net short position which gives rise to an economic exposure to the issued share capital of a company.

Any calculation of whether a person has a short position must take account of any form of economic interest in the shares of the company.

UK financial sector company a company that is a:

- (a) UK bank; or
- (b) UK insurer; or
- (c) UK incorporated parent undertaking of a company referred to in (a) or (b).

Annex B

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text.

Short selling in relation to financial sector companies

- 1.9.2C E (1) A person who enters into a transaction that (whether by itself or in conjunction with other transactions) has the effect of:
- (a) creating a net short position in a UK financial sector company; or
 - (b) increasing any net short position in a UK financial sector company that the person had immediately before 19 September 2008;
- is, in the opinion of the FSA, engaging in behaviour that is market abuse (misleading behaviour).
- (2) Paragraph (1) does not apply to a person acting in the capacity of a market maker.
 - (3) Paragraph (1) does not apply to a transaction entered into or an order placed before 19 September 2008.
 - (4) This provision ceases to have effect on 16 January 2009.

Disclosure of pre-existing positions

- 1.9.2D E (1) Failure by a person who has a disclosable short position in a UK financial sector company to provide adequate ongoing disclosure of their position is behaviour which, in the opinion of the FSA, is market abuse (misleading behaviour).
- (2) In paragraph (1), “adequate ongoing disclosure” means disclosure made on a RIS by no later than 3.30pm on the business day following each day on which the disclosable short position is held. The disclosure must include the name of the person who has the position, the amount of the position and the name of the company in relation to which it has that position.
 - (3) The first disclosure required under this provision is by 3.30pm on 23

September 2008 which should relate to positions held on 19 September and 22 September.

(4) This provision ceases to have effect on 16 January 2009.

1.9.2E

G MAR 1.9.2D E refers to a person providing adequate ongoing disclosure of *disclosable short positions*. A person may have such an interest despite MAR 1.9.2C E because they had a *disclosable short position* before 19 September 2008 or because they had a short position before that date which due to other extraneous factors becomes a *disclosable short position*.