

## Chapter 2

# Short selling



2.6      Procedures relating to the market  
maker exemption and the  
authorised primary dealer  
exemption

[**Note:** The *FCA* has powers under the *short selling regulation* to prohibit a natural or legal person from using the *market maker exemption* and the *authorised primary dealer exemption* if the *FCA* considers that that person does not satisfy the conditions of the exemption that that person has notified the *FCA* it intends to use.]

**Decision on use of the market maker exemption or the  
authorised primary dealer exemption**

- 2.6.1      

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 Pursuant to the Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 (SI 2012/2554), the *FCA* will direct how notifications to use the *market maker exemption* or the *authorised primary dealer exemption* shall be made. Such directions will be published on the *FCA* website and listed in ■ FINMAR 2 Annex 1 G.
- 2.6.2      

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(1) If the *FCA* considers that a natural or legal person ('P') who has notified the *FCA* of his intention to use either the *market maker exemption* or the *authorised primary dealer exemption* does not satisfy the criteria to use the *market maker exemption* or the *authorised primary dealer exemption*, the *FCA* will send a letter to P setting out the reasons why it is minded to prohibit P from using the *market maker exemption* or the *authorised primary dealer exemption*.

(2) P will be given the opportunity to make written representations to the *FCA* concerning P's use of the *market maker exemption* or the *authorised primary dealer exemption*.

(3) The *FCA* will decide whether to prohibit P's use of either the *market maker exemption* or the *authorised primary dealer exemption* having regard to P's notification and any written representations made by P. The decision whether or not to prohibit the use by P of either the *market maker exemption* or the *authorised primary dealer exemption* will be made by senior staff members of the *FCA* who were not involved in the initial consideration of P's notification.

## 2.6.3

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**Review of a decision to prohibit the market maker exemption  
or the authorised primary dealer exemption**

If P is not satisfied with the FCA's decision to prohibit P's use of the *market maker exemption* or the *authorised primary dealer exemption*, P may seek a review of the decision. This will be conducted by a group of at least three senior FCA staff. None of the group conducting the review will have been connected with the earlier decision taken in respect of P's use of the *market maker exemption* or the *authorised primary dealer exemption*. The review may take place after the expiry of the 30 day period in which the notification should be made under the *short selling regulation*, but within 3 months of the decision referred to in ■ FINMAR 2.6.2 G (3).

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