



Update Regarding UK's Short-Selling Prohibition

Our client alert dated 19 September 2008 (<http://www.mofo.com/news/updates/files/080919UKNewShort.pdf>) reported on the temporary emergency measures taken by the UK's Financial Services Authority (FSA), which impose a ban on all short-selling in publicly-quoted UK financial sector companies and a heightened obligation to disclose net short positions in the shares of such companies.

Further to the initial announcement of these measures, the FSA on 23 September 2008 published the Short Selling (No 3) Instrument¹, which conformed the definition of a "market maker" for the purposes of the disclosure obligation to its definition for the purposes of the dealing prohibition and clarified the definition of a "UK financial sector company" to mean that the "parent undertaking" of a bank or insurer must belong to the same "group" whose main business is "financial services".

On 23 September 2008, the FSA also published an updated list of the financial sector companies to which the rules apply, adding 6 new companies (i.e., Aberdeen Asset Management Plc, Close Brothers Group Plc, F&C Asset Management Plc, Investec Plc, Rathbone Brothers Plc and Schroders Plc) and deleting one company from the previous list (i.e., Resolution Plc)².

On 26 September 2008, the FSA published further updated FAQs (Version 3)³ and an updated short position disclosure form (Form TR-4)⁴.

The FSA's definition of a "market maker" is different from that of the London Stock Exchange (LSE) under the LSE Rules and the FSA has stated in the FAQs that registration as a "market maker" with an exchange or trading

¹. Short Selling (No 3) Instrument 2008, http://fsahandbook.info/FSA/handbook/LI/2008/2008_51.pdf.

². FSA amended list, as at 23 September 2008, of UK incorporated banks and insurers in connection with Short Selling (No 2) Instrument 2008, http://www.fsa.gov.uk/pubs/handbook/list_instrument200850.pdf.

³. Short Selling (No 2) Instrument 2008. FAQs Version 3 - Issued 26 September 2008, http://www.fsa.gov.uk/pubs/other/Short_selling_FAQs_V3.pdf.

⁴. Form TR-4: Disclosure of Short Position relating to UK Financial Sector Company (Version 2.0 September 2008) http://www.fsa.gov.uk/pubs/other/Form_TR4.pdf.

platform is not relevant for the purposes of its definition. The LSE has therefore published guidance notices on the “market maker” exemption for its member firms on 19 and 25 September 2008⁵.

The new short selling rules will remain in force until 16 January 2009, unless extended by the FSA.

Contacts

Peter Green
4420 7920 4013
pgreen@mofocom

Jeremy Jennings-Mares
4420 7920 4072
jjenningsmares@mofocom

About Morrison & Foerster

With more than 1000 lawyers in 17 offices around the world, Morrison & Foerster offers clients comprehensive, global legal services in business and litigation. The firm is distinguished by its unsurpassed expertise in finance, life sciences, and technology, its legendary litigation skills, and an unrivaled reach across the Pacific Rim, particularly in Japan and China.

For more information, visit www.mofocom.
© 2008 Morrison & Foerster LLP. All rights reserved.

⁵. London Stock Exchange Notice N21/08 (25th September 2008), <http://www.londonstockexchange.com/NR/rdonlyres/2BF76A6A-A967-4688-A63F-4FA57896FCDE/0/N2108.pdf>; London Stock Exchange Notice N15/08 (19th September 2008); <http://www.londonstockexchange.com/NR/rdonlyres/E61230C9-F8C3-4010-A51C-E3D8CB6CFDCA/0/N1508.pdf>.