

Economic Stabilization Advisory Group | January 16, 2009

Global Clampdown on Short Selling: an Overview (v5)

This is likely to be our final update on short selling rules, at least for a while, unless it transpires there is demand for a continuance. This is because the new regimes are settling down and in some cases even being revoked or watered down.

This memorandum summarizes the measures taken in the main financial jurisdictions worldwide to prohibit or place regulatory restrictions on short selling.¹ These short selling restrictions were prompted by the concern that steep falls in the share prices of financial institutions would undermine confidence in those institutions and hamper their efforts to raise capital. Regulators took the view that short selling was exacerbating market falls.

The restrictions on short selling increase the risks for a number of financial institutions, from hedge funds to the proprietary trading desks of banks. Short selling has historically been an integral part of many trading and investing strategies, and also a hedging tool. Those engaged in such activities must now ensure they do not fall foul of the new restrictions.

The restrictions imposed by regulators have largely been temporary measures. Some of the measures are starting to be removed or 'lightened'. Some jurisdictions are now considering longer-term proposals on short selling. In Europe, the Committee of European Securities Regulators (the "CESR") is considering the impact of the temporary measures that have been introduced and aims to ensure a coordinated approach is taken by EU regulators in future, particularly on the issue of whether certain short selling restrictions or obligations should be made permanent.

This note is an updated version of the previous version which was published on December 10, 2008.² Regulators in some jurisdictions have, since then, adopted further measures or made amendments to the measures previously adopted.³ The current version of the note takes into account those measures and is based on information available to us on January 16, 2009.

¹ Short selling is the practice of profiting from declines in the prices of securities by selling securities that the seller does not own, but which the seller borrows from another party. The seller returns the securities to the lender by buying them back from the market after their price has fallen. Traders can also take a short position in a security by, among other things, buying a put option or selling a future.

² The following jurisdictions had adopted further measures or amended previous measures: Hong Kong, Ireland, India, Japan, Russia, Singapore, the United Kingdom, and the United States. The update is available at http://www.shearman.com/esag_121008/.

³ Australia, Belgium, China, France, Germany, Italy, the Netherlands, the United Kingdom, and the United States.

UNITED STATES OF AMERICA

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	EXEMPTIONS	OTHER PROVISIONS
<p>Form SH Order</p> <p>The SEC issued an emergency order on September 18, 2008 (the "Form SH Order"), requiring institutional money managers that exercise discretion over \$100,000,000 or more to file a new form (Form SH) with the SEC weekly.</p> <p>On October 15, 2008, the SEC adopted Temporary Form SH as interim final temporary rule 10a-3T, expiring on August 1, 2009.</p>	<p>Form SH, which will be non-public, requires institutional investment managers that exercise "investment discretion" with respect to accounts holding "section 13(f) securities" having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100,000,000 to file a new form with the SEC. This new form, Form SH, must be filed electronically with the SEC on the last business day of every calendar week immediately following a week in which the manager effected short sales.</p> <p>For each section 13(f) security sold during the previous week, Form SH requires the following daily information:</p> <ul style="list-style-type: none"> ▪ The date of the transaction; ▪ The institutional investment manager by EDGAR Central Index Key; ▪ The issuer name and CUSIP for the relevant securities; ▪ The start of day short position; ▪ The gross number of securities sold short during the day; and ▪ The end of day short position. <p>For purposes of Form SH, a "short position" is the aggregate gross short sales of an issuer's section 13(f) securities (excluding options), less purchases to close out a short sale in the same manner. The Form SH</p>	<p>Section 13(f) securities are "equity securities of a class described in section 13(d)(1) of the Act that are admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association." (Rule 13f-1(c) of the U.S. Securities and Exchange Act of 1934).</p>	<p>The following are exceptions to the filing requirement:</p> <ul style="list-style-type: none"> ▪ No disclosure is required for any period during which no short sales have been effected since the previous filing of a Form SH; and ▪ No disclosure is required where on each calendar day of the calendar week, (a) the start of day short position, the gross number of securities sold short during the day and the end of day short position each constitute less than one quarter of one percent of the class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly or current report, unless the manager knows or has reason to believe the information contained therein is inaccurate, and (b) the fair market value of the start of day position, the gross number of securities sold short during the day and the end of day short position are each less than \$10,000,000. <p>The following short sales need not be reported on Form SH:</p> <ul style="list-style-type: none"> ▪ Where on any calendar day of the calendar week, (a) the start of day short position, the gross number of securities sold short during the day or the end of day short position in the section 13(f) security constitutes less than one quarter 	

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	short position is not net of long position in the issuer.		<p>of one percent of that class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly or current report, unless the manager knows or has reason to believe the information contained therein is inaccurate, and</p> <p>(b) the fair market value of the start of day position, the gross number of securities sold short during the day or the end of day short position is less than \$10,000,000; provided the institutional money manager designates its reliance on this exception on the Form SH; and</p> <ul style="list-style-type: none"> ▪ Where a broker or dealer seeks to execute a customer order, either in whole or in part, through a riskless principal transaction, and a short sale results from a sale order of a customer who is net long the section 13(f) security, or a purchase order of a section 13(f) security. 	
<p>Amendments to Regulation SHO; penalties for failure to close failed positions</p>				
<p>On September 17, 2008, the SEC proposed certain amendments to Regulation SHO (the "Regulation SHO Order").</p> <p>These amendments (a) impose penalties for failing to deliver an equity security (adopted as Rule 204T under Regulation SHO) and (b) eliminate the "options market maker" exception (a technical exception to the close-out requirements under US law).</p>	<p>(a) Rule 204T of Regulation SHO imposes a penalty on any "participant" of a "registered clearing agency", and any broker-dealer from which it receives trades for clearance and settlement, for having a fail to deliver position at a registered clearing agency in any equity security. Specifically, any participant of a registered clearing agency must, by no later than the beginning of regular trading hours on the settlement day following the settlement date, immediately</p>	<p>Rule 204T affects all publicly traded equity securities.</p>	<p>Rule 204T provides the following exemptions:</p> <ul style="list-style-type: none"> ▪ Participants that can demonstrate on their books and records that such fail to deliver positions resulted from a long sale must deliver securities of like kind and quality by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date; 	<p>Rule 10b-21: On October 14, 2008, the SEC adopted the previously proposed Rule 10b-21, which is an antifraud rule that prohibits any person from intentionally deceiving a broker-dealer, or a buyer, as to the intention or ability of that person to deliver shares on the settlement date. This rule is not intended to limit or restrict the applicability of the general antifraud provisions of the federal securities laws.</p>

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	EXEMPTIONS	OTHER PROVISIONS
<p>(a) On October 14, 2008, the SEC adopted Rule 204T on an interim final temporary basis, expiring on July 31, 2009.</p> <p>(b) On October 14, 2008, the SEC also adopted the elimination of the “options market maker exception” as proposed.</p>	<p>close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity.</p> <p>Any participant and related broker-dealer who does not comply with the close-out rules discussed above (i) will be prohibited from accepting a short sale order in the equity security from another person, and (ii) will be prohibited from effecting a short sale in the equity security for its own account, without first borrowing the security or entering into a <i>bona fide</i> arrangement to borrow the related security. Furthermore, any such participant must notify any broker or dealer from which it receives trades for clearance and settlement of the existence of a fail to deliver position that has not been closed out in accordance with the rule (together with (i) and (ii) above, the “Penalties”).</p> <p>(b) If a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or from which it receives trades for settlement, based on such broker’s or dealer’s short position, the provisions of Rule 204T will apply to such registered broker dealer only. A broker or dealer that has a fail to deliver position must immediately notify the participant that it has become subject to the Penalties.</p> <p>Rule 203(b)(3) of Regulation SHO was amended to eliminate the options market</p>		<ul style="list-style-type: none"> ▪ Participants that fail to deliver positions in Rule 144 securities must deliver securities of like kind and quality by no later than the beginning of regular trading hours on the thirty-sixth consecutive settlement day following the settlement date; ▪ Participants with fail to deliver positions attributable to bona fide market making activities by a registered market maker, options market maker, or other market maker obligated to quote in the over-the-counter market (“Market Makers”) must deliver securities of like kind and quantity by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date; and ▪ Brokers or dealers who purchase securities prior to the beginning of regular trading hours on the settlement day after the settlement date for a long or short sale to close out an open short position, and if (a) the purchase is bona fide; (b) the purchase is executed on, or after, the trade date but by no later than the end of regular trading hours on the settlement date for the transaction; (c) the purchase is of a quantity of securities sufficient to cover the entire amount of the open short position; and (d) the broker or dealer can demonstrate that it has a net long position or net flat position on its books and records on the settlement day for which the broker or dealer is seeking to demonstrate that it has purchased shares 	

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	<p>maker exception from Regulation SHO's close-out requirement. Under Regulation SHO as it existed prior to this amendment, the requirement to close failed positions in certain "threshold" securities did not apply to short sales by a registered options market maker, if and to the extent that the short sales are effected by the registered options market maker to establish or maintain a hedge on an options position that was created before the security became a threshold security.</p>		<p>to close out its open short position (the "Broker Dealer Exemption").</p> <p>The Penalties will not apply to the following:</p> <ul style="list-style-type: none"> ▪ Brokers or dealers who timely certify to the participant of a registered clearing agency that they have not incurred a fail to deliver position on a settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or that they are in compliance with the Broker Dealer Exemption; and ▪ Market Makers that can demonstrate that they do not have open short positions in the equity security at the time of any additional short sales. 	
<p>The Short Sale Ban Order (Expired)</p>				
<p>The U.S. Securities and Exchange Commission (the "SEC") issued an emergency order on September 18, 2008, (the "Short Sale Ban Order") prohibiting short sales of the securities of certain financial institutions for a limited period.</p> <p>On September 21, 2008, the SEC amended certain provisions of the Short Sale Ban Order.</p> <p>On October 2, 2008, the SEC temporarily extended the Short Sale Ban Order.</p>	<p>The Short Sale Ban Order prohibited short sales in certain publicly traded securities of financial institutions.</p>	<p>The Short Sale Ban Order provided a list of 799 financial institutions ("Included Financial Firms"), in whose securities short selling was prohibited. A list of these firms is available on the SEC's Internet website at http://www.sec.gov/rules/other/2008/34-58592.pdf.</p> <p>The SEC later amended the Short Sale Ban Order to give national securities exchanges the ability to expand this list. These expanded lists were published on the websites of various national securities exchanges.</p>	<p>The Short Sale Ban Order provided exceptions for:</p> <ul style="list-style-type: none"> ▪ Short sales by bona fide market makers; ▪ Short sales that occur as a result of automatic exercise or assignment of an equity option held prior to effectiveness of the Short Sale Ban Order due to expiration of the option; ▪ Short sales effected by options market makers when short selling as part of bona fide market making and hedging activities related directly to bona fide market making in derivatives; provided that a market maker may not effect a short sale in a covered security if the market maker 	

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	EXEMPTIONS	OTHER PROVISIONS
<p>The Short Sale Ban Order expired on October 8, 2008 with the coming into force of the Emergency Economic Stabilization Act 2008.</p>			<p>knows that the customer's or counterparty's transaction will result in the customer or counterparty establishing or increasing an economic net short position in the issued share capital of a firm covered by the Short Sale Ban Order.</p> <ul style="list-style-type: none"> ▪ Short sales that occur as a result of the expiration of futures contracts held prior to effectiveness of the order; ▪ Short sales effected by the writer of a call option in any covered security as a result of assignment following exercise by the holder of that call option; and ▪ Short sales pursuant to Rule 144 of the U.S. Securities Act of 1933. 	

EU JURISDICTIONS

Short selling under the European Market Abuse Directive

The Market Abuse Directive is a measure adopted by the European Union to impose a uniform regime for dealing with market abuse. The Directive has been implemented in all the European Union countries. It does not prohibit short selling as such. However, any short selling activity will fall within the prohibitions of the Directive if it involves “insider dealing” (Articles 2 and 3 of the Directive) or “market manipulation” (Article 5 of the Directive). Many EU jurisdictions have a set of rules that define in detail what does and does not amount to market abuse. The recent measures against short selling have usually taken the form of a clarification of these rules that effectively regards short selling of certain securities to be market abuse, by taking the view that such short selling in times of extreme market volatility effectively involves market manipulation.

UNITED KINGDOM

ACTION TAKEN	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The UK’s Financial Services Authority (“FSA”) had previously adopted measures that effectively treated the creation or increase of a net short position in a UK financial sector company as market abuse. It also imposed disclosure obligations on those holding a ‘disclosable short position’ in such companies.</p> <p>These measures took the form of amendments to the Code of Market Conduct of the FSA Handbook. The Code constitutes authoritative guidance on the market abuse offence (prohibited by section 118 of the Financial Services and Markets Act 2000).</p> <p>The measures were due to expire on January 19, 2009. Following a brief consultation with market participants, on January 14, 2009, the FSA adopted a</p>	<p>The amended disclosure obligation applies to a net short position in a “UK Financial Sector Company”, i.e. certain financial sector companies whose shares are admitted to trading on a market established under the rules of a recognized investment exchange (including the London Stock Exchange, virt-x, AIM or PLUS) or in respect of which a request for admission to trading on such a market has been made.</p> <p>The FSA has compiled the following non-exhaustive list of such companies which can be found at: http://www.fsa.gov.uk/pubs/other/Shortselling_list.pdf.</p> <p>Any economic interest held as part of a basket, index or exchange traded fund</p>	<p>It is market abuse for a person with a “disclosable short position” to fail to make “adequate ongoing disclosure” of that position.</p> <p><u>Disclosable short position</u>: means a net short position representing an economic interest of 0.25% or more of the issued (ordinary and preference) share capital of a company, excluding any interest held as market maker in that capacity. A holder of economic interests in a UK Financial Sector Company may net its long and short positions in that company. The disclosable position will be any net short position of 0.25% or above.</p> <p><u>Adequate ongoing disclosure</u>: is disclosure on a Regulatory Information Service (such as the London Stock Exchange’s RNS service) by no later than 3.30 p.m. on the business day following the day on which the position reaches, exceeds or falls below a</p>	<p>Persons acting in the capacity of market makers (which can include those who are not registered as market makers with an exchange) are exempt from the amended disclosure obligation, including the disclosure obligation that relates to rights issue securities.</p> <p>A market maker is defined as an entity that ordinarily, as part of its business, deals as principal in equities, options or derivatives (whether OTC or exchange-traded):</p> <p>(i) To fulfill orders received from clients, to respond to a client’s requests to trade or to hedge positions arising out of those dealings; and/or</p>	<p>Fund managers:</p> <p>If a fund manager holds short positions on behalf of a non-discretionary client, the disclosure obligation applies to the client. The fund manager can disclose on behalf of a client, but the disclosure must clearly identify that it is the client who holds the disclosable position.</p> <p>In the case of discretionary clients, the disclosure obligation applies at the level of both the entity holding the position and at the level of the investment manager or authorised fund manager. The investment manager or authorised fund manager may make a disclosure on behalf of its client. In respect of itself, the investment manager or authorised fund manager is required to</p>

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<p>new measure (the Short Selling (No. 5) Instrument 2009).</p> <p>As a result of this measure:</p> <p>(i) the previous 'ban' on the short selling of financial company stocks expired at 00:00:01 on January 16, 2009.</p> <p>(ii) the previous disclosure obligation will continue to remain in force until June 30, 2009. However, the disclosure obligation has been amended</p> <p>The FSA will continue to keep the measures under review in the light of market conditions.</p>	<p>(ETF) where the basket, index or ETF has economic exposure to UK Financial Sector Companies must be included when calculating the net short position in each relevant stock.</p> <p>The relevant denominator for calculating net short positions is the entire issued share capital of the company comprising ordinary shares or preference shares. Economic exposure in the issued share capital of a company means any instrument (contracts for differences, spread bets, options, futures, etc.) giving rise to an exposure, whether direct or indirect, to the issuer share capital of a company. The issued share capital of a company includes ordinary shares and preference shares but would exclude debt securities.</p> <p>When calculating a net short position in a rights issue period, a person should only include economic interests in the pre-existing share capital of the company. Economic interests relating to share capital that will be issued in the future must be excluded from the calculation. The denominator for the calculation of a net short position would be the undiluted share capital.</p>	<p>disclosable short position of 0.25%, 0.35%, 0.45% and 0.55% of the issued share capital of the company and each 0.1% threshold thereafter.</p> <p>Thus, a person must disclose any new net short position of 0.25% or more in a UK financial sector company. Once a disclosure has been made, additional disclosures are only required if the short position reaches, exceeds or falls below disclosure bands placed every 0.1% above the 0.25% threshold, i.e. 0.35%, 0.45%, 0.55% etc. If a net short position decreases below 0.25% a disclosure will also need to be made.</p> <p>The previous measures required adequate ongoing disclosure on each day that the disclosable short position changed (even if the change was less than an increment or decrement of 0.1%).</p>	<p>(ii) In a way that ordinarily has the effect of providing liquidity on a regular basis to the market on both bid and offer sides of the market in comparable size.</p> <p>Trading in circumstances other than genuinely for the provision of liquidity is not exempt. This exemption covers market makers only when, in the particular circumstances of each transaction, they are acting in that capacity.</p>	<p>disclose its aggregate disclosable short position across all of the funds it manages on a discretionary basis.</p> <p>Where a disclosure by an investment manager or authorised fund manager is the same as that being made for its client / fund / sub-fund, it is permitted to make a single disclosure provided that the disclosure makes it clear that it applies to both parties.</p> <p>Different trading desks:</p> <p>If a firm has several trading desks that are part of the same legal entity, the aggregate position of the legal entity is taken into account, excluding positions falling within the market maker exemption.</p>

UNITED KINGDOM: MEASURES RELATING TO RIGHTS ISSUE SECURITIES				
ACTION TAKEN	OBLIGATIONS	STOCKS AFFECTED	EXEMPTIONS	FURTHER GUIDANCE
<p>On June 12, 2008, the FSA adopted the Short Selling Instrument 2008.</p> <p>The Instrument, which came into effect on June 20, 2008, inserts new provisions – paragraphs 1.9.2A(E) and 1.9.2B(R) – into the Code of Market Conduct.</p> <p>The effect of these new Code provisions is effectively to impose a disclosure requirement on those reaching or exceeding a disclosable short position in rights issue securities.</p>	<p>It is a market abuse for a person to fail to give adequate disclosure when reaching or exceeding a “disclosable short position” that relates, directly or indirectly, to rights issue securities.</p> <p>“Disclosable short position”: a net short position representing an economic interest of 0.25% or more of the issued capital of any company (<i>i.e.</i> not just UK Financial Sector Companies), taking into account any form of economic interest in the shares of the company (excluding interests held in the capacity of a market maker).</p> <p>Adequate disclosure is disclosure made on a Regulatory Information Service (such as the London Stock Exchange’s RNS service) by no later than 3.30 p.m. on the business day following the date on which the disclosable short position is reached or exceeded. The disclosure must include the name of the person who has the disclosable short position, the disclosable short position and the name of the issuer of the qualifying instruments.</p>	<p>Rights issue securities: the measure applies to securities which are the subject of a rights issue and the position is reached or exceeded during a rights issue period.</p> <p>The securities must also have been admitted to trading on a market established under the rules of a recognized investment exchange (including the London Stock Exchange, virt-x, AIM or PLUS) or in respect of which a request for admission to trading on such a market has been made.</p> <p>“Rights issue period” is the period that commences on the date a company announces a rights issue and which ends on the date that the shares issued under the rights issue are admitted to trading on a prescribed market.</p>	<p>Positions held in the capacity of market maker are excluded when determining whether a “disclosable short position” has been reached or exceeded.</p>	<p>If a UK Financial Sector Company enters into a rights issue period, trading in relation to its securities is subject to both the disclosure obligation discussed in this section and the disclosure obligation set out above.</p> <p>When calculating a net short position in a rights issue period, a person should only include economic interests in the pre-existing share capital of the company. Economic interests relating to share capital that will be issued in the future must be excluded from the calculation. A person cannot, therefore, net off a short position in the company's pre-existing share capital with a long position in the nil-paid rights. Similarly, nor can a prospective long position in the new shares arising from an underwriting/sub-underwriting commitment be netted off. This applies in respect of the paragraphs 1.9.2A E and 1.9.2D E of the Code of Market Conduct. The denominator for the calculation of a net short position should be the undiluted share capital.</p>

BELGIUM

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Banking Finance and Insurance Commission ("CBFA") adopted new rules on September 19, 2008, which were confirmed by a Royal Decree of September, 23, 2008.</p> <p>The rules are intended to prohibit "naked shorting", <i>i.e.</i> selling shares to another without 'complete coverage' (e.g. where the seller does not own or has not borrowed the shares).</p> <p>The new rules came into force at 00.01 a.m. on Monday September 22, 2008.</p> <p>The rules were set to cease to have effect on December 21, 2008 but they have been extended by a Decree of the Minister of Finance ¹ until Friday March 20, 2009. The rules may be withdrawn earlier or extended beyond March 20, 2009, depending on the market conditions and taking into account the developments in other Member States of the European Union.</p>	<p>Prohibition on uncovered short positions.</p> <p>Short positions without adequate coverage are prohibited.</p> <p>The short seller must have coverage consisting of the securities that have been sold or the securities to which a derivative transaction relates. Coverage through derivatives is not adequate: the seller must either possess the securities concerned before selling them on the market or before creating a covered short position.</p> <p>Short positions arising due to a derivative instrument must also be adequately covered. The rules cover both OTC and exchange-traded instruments and even transactions entered into abroad.</p> <p>Adequate coverage includes:</p> <ul style="list-style-type: none"> ▪ Possession of the securities prior to selling (e.g. by borrowing the securities ²); ▪ Putting in place securities lending arrangements prior to selling on the basis of which the 	<p>The measures apply to stock (<i>i.e.</i> shares) and any kind of derivative instrument (including futures) in the following financial institutions:</p> <p>Dexia SA</p> <p>Fortis NV/SA</p> <p>KBC Groep NV</p> <p>KBC Ancora CVA</p> <p>ING Groep NV</p>	<p>Anyone who holds a net economic short position which represents an economic interest in excess of 0.25% of the capital of the issuers of the stocks affected must report this to the CBFA and the market by any appropriate means.</p> <p>"Net economic short position" means any instrument (shares, contracts for differences, spread bets, options, etc) giving rise to an exposure, whether direct or indirect, in the equity share capital of the company.</p> <p>The disclosure obligation does not apply to orders entered prior to 00.01 a.m., on September 22, 2008.</p> <p>Disclosure to the market must be made through an internationally-distributed press release. As for notification to the CBFA, market participants can send their notification either by email to info.fin@cbfa.be or by fax to + 32 2 220 59 03.</p> <p>The disclosure to the market must be on a net basis, whilst that to the</p>	<p>The following exemptions apply:</p> <p>(i) Market makers on the derivatives market and liquidity providers on the cash market (as defined in the Rulebook of Euronext) are exempt.</p> <p>(ii) Block trade counterparties are also exempt: financial intermediaries (licensed banks and investment companies) may sell blocks to their clients without having the securities at hand and therefore have a temporary short position. However, when a client wants to sell a block to his intermediary, the latter must ascertain that his client has appropriate coverage.</p> <p>(iii) Financial intermediaries (licensed banks and investment companies) that are usually active as market makers in OTC markets (cash or derivatives) by offering sell and buy prices are also exempt.</p>	<p>Fund Managers:</p> <p>In the case of short positions held by fund managers on behalf of non-discretionary clients, the obligations apply to the client.</p> <p>In the case of short positions held by fund managers on behalf of discretionary clients, the fund manager is subject to the obligations.</p> <p>Where the fund manager has a mandate to manage more than one individual fund, it should aggregate all the positions of its discretionary funds for the purposes of determining whether it is required to make disclosure.</p> <p>Different legal entities in a group:</p> <p>Where short positions are held across different legal entities, the calculation of the net short position and the disclosure should be made at the group level.</p>

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
	<p>securities will be delivered at the latest at D+3 where D is the date of the short-sale; and</p> <ul style="list-style-type: none"> ▪ Buying the securities prior to selling them where the securities will be delivered at the latest on D+3. <p>Qualified intermediaries are required to take reasonable measures to ascertain that their clients have appropriate coverage for their proposed transactions. For clients with direct market access, intermediaries should, as a minimum, obtain a general representation about their coverage.</p>		<p>CBFA has to be on a gross basis. The aggregated net economic short position should be broken down into its component parts.</p> <p>If a person's net short position falls below 0.25%, then one last disclosure of that fact is required.</p> <p>The disclosure obligation also applies to those with a net short position that arises after September 21, 2008; not as a result of any transaction if it is at or above the 0.25% threshold.</p>		

¹ Ministerial Decree of December 19, 2008 extending the application of the Royal Decree of September 23, 2008.

² CBFA has requested market participants (including collective investment schemes) to refrain from lending the securities concerned, except in three very specific cases: (i) lending the securities in order to cover a position existing prior to September 22, 2008; (ii) lending the securities in order to respect commitments made before the same date; or (iii) if the lending concerns an operation without any link to an economic short position taken.

FRANCE

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The French <i>Autorité des Marchés Financiers</i> (AMF) issued a press release on September 19, 2008 (available in English at http://www.amf-france.org/documents/general/8424_1.pdf) and a Q&A on September 23, 2008 (available in English at http://www.amf-france.org/documents/general/8429_1.pdf) to deal with short selling of financial sector stocks.</p> <p>This press release strengthens already existing measures inserted in the <i>Règlement général de l'AMF</i> (General rules of the AMF). The most significant of these pre-existing measures is that an investor must be able to deliver securities sold three trading days after the trade date.</p> <p>The new measures came into force on September 22, 2008 for a three-month period. On December 19, 2008, the AMF decided to keep in place these measures. They will be re-examined in February, 2009 with the objective of setting up a permanent regime.</p>	<p>It is now prohibited (regarded as the offense of market abuse) for a person to enter into a transaction (defined as any spot, forward or optional transactions whether for own account or for third parties) with the purpose or effect of violating or circumventing the following provisions:</p> <ul style="list-style-type: none"> ▪ Any investor giving a sell order for one of the affected securities with deferred settlement service requested must hold 100% of the securities (including through a stock loan) to be sold on its account with its financial intermediary. ▪ Any investment service provider receiving a sell order for one of the affected securities must require its client to deposit the securities to be sold on its account with the investment service provider before the order is executed. If the investment service provider is not the custodian of the client's assets, it must get an explicit statement from the client that it 	<p>The restrictions apply to a naked short selling of stocks of "credit institutions or insurance companies" whose shares are admitted to trading on a regulated market in France (<i>i.e.</i> Euronext Paris, MATIF and MONEP).</p> <p>The AMF has compiled an exhaustive list of such companies which can be found in English at http://www.amf-france.org/documents/general/8425_1.pdf.</p>	<p>It is market abuse for any person holding a net short position representing an economic interest of 0.25% or more of the issued share capital of an affected company to fail to disclose it to the AMF and to the public at the latest on the trading day following the date of the transaction (a specific form is available in English at http://www.amf-france.org/documents/general/8435_1.pdf).</p> <p>The AMF clarified some issues related to disclosure obligations. In particular:</p> <ul style="list-style-type: none"> ▪ Positions in the same group shall be calculated on a consolidated basis. ▪ Portfolio management companies must aggregate all of the short positions in the stocks of a given issuer for CIS or management account. 	<p>Neither the prohibition nor the disclosure obligation apply to investment service providers acting as market makers, liquidity providers or as counterparties for block trades in equities.</p> <p>Market makers and liquidity providers are defined for these purposes as market members that have a contract with Euronext or that manage a liquidity contract signed with the issuer or are authorized financial intermediaries in France whose regular business is to quote bid and ask prices on OTC or cash or derivative markets.</p> <p>The AMF has explained that intermediaries acting as counterparties for block trades in equity may respond to a client's buy order without owning the securities and thus find themselves temporarily in a short position. However, if the client gives a sell order where the intermediary is likely to act as counterparty, the intermediary must ensure that the client actually owns the affected securities.</p>	<p>For orders in the order book but not executed on or before September 22, 2008, the intermediary must ascertain that the sellers actually own the securities and, if the intermediary is not the custodian, the client must provide a formal statement to this effect. Otherwise, such orders must be cancelled.</p> <p>As regards the creation of a short position using derivatives, the AMF clearly stated that investors are not allowed to use derivatives to create a short position. They may only use derivatives to hedge long positions.</p> <p>The AMF further stated that trades in index derivatives are not prohibited per se. However, if the hedging of such trades requires the sale of affected securities, the seller must own the securities at the time of the intended sale.</p>

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	<p>holds the relevant securities. This explicit statement may take the form of a client's undertaking to comply with the ownership requirement. Although stock loans are not prohibited outright, financial institutions are required to abstain from lending the affected stocks. However, financial institutions may lend affected shares in order to cover existing positions, to meet commitments made before these measures were implemented or if the transaction is not related to creating short positions.</p>				

GERMANY

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Federal Financial Supervisory Authority (BaFin) on September 19, 2008 issued a General Decree temporarily prohibiting naked short sales of shares of eleven companies in the financial sector. The ban took effect on September 20, 2008 and had an initial term until December 31, 2008. By a General Decree dated December 17, 2008, the ban was prolonged and will now apply until March 31, 2009. The prohibition will continue to be reviewed on an ongoing basis and BaFin is able to revoke it to promptly respond to any further changes in the market. Positions existing before September 20, 2008 are not covered by the prohibition.</p> <p>The ban was supplemented by a General Decree issued on September 21, 2008 to clarify that certain transactions are considered legitimate and are therefore exempted from the ban on short selling, and extended by a decree dated December 17, 2008.</p> <p>A translation of the respective decrees can be found at:</p>	<p>The decree prohibits transactions that result in a short position or in an increase in a short position in shares issued by certain specified companies in the financial services sector. Only naked short transactions, <i>i. e.</i> transactions in the specified shares that are not backed by securities lending, are affected by the prohibition.</p> <p>The ban also applies to intra-day short positions.</p> <p>A short position within the meaning of the decree arises when at the time of the transaction if the seller of the shares:</p> <p>(a) Does not own such shares; or</p> <p>(b) Does not have any enforceable legal claim under the law of obligations or under property law (i) to be transferred title in shares of the same class, or (ii) that results in the title in shares of the same class being transferred.</p> <p>In consequence, in case of (non-prohibited) short sales backed by securities lending, such securities lending transactions must be</p>	<p>The prohibition applies to short sales of shares of the following financial sector companies:</p> <ul style="list-style-type: none"> • Aareal Bank AG • Allianz SE • AMB Generali Holding AG • Commerzbank AG • Deutsche Bank AG • Deutsche Börse AG • Deutsche Postbank AG • Hannover Rückversicherung AG • Hypo Real Estate Holding AG • MLP AG • Münchener Rückversicherungs-Gesellschaft AG 	<p>The decree does not contain any specific disclosure obligations in addition to the general disclosure obligations for securities transactions under the German Securities Trading Act (<i>Wertpapierhandelsgesetz, WpHG</i>). Such disclosure rules currently do not provide for any notification obligations for short selling transactions.</p>	<p>The decree provides for the following exemptions:</p> <ul style="list-style-type: none"> • “Name-to-follow” transactions (<i>Aufgabe-geschäfte</i>) by lead brokers (<i>Skontro-führer</i>) within the meaning of Sec. 95 of the German Commercial Code (<i>Handelsgesetzbuch, HGB</i>); • Transactions of persons who are under a contractual obligation to make binding buy and sell bids (<i>e.g.</i> market makers; designated sponsors) to the extent that such transactions are required for the performance of their contractual obligations; and • Short sales used to secure already existing positions. <p>Pursuant to a further decree issued on September 21, 2008, an additional exemption was provided to transactions agreed by market participants with a customer for the settlement of a transaction in shares concluded at a fixed or definable price (so called fixed-price transaction).</p>	<p>N/A.</p>

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http://www.bafin.de/clin_116/nn_720486/SharedDocs/Artikel/EN/Service/Meldungen/meldung_081219_leerv_verlaeng.html?_nnn=true	<p>concluded simultaneously with the respective short sale at the latest.</p> <p>As from September 20, 2008, new issues of put instruments (put warrants, put certificates) may no longer be hedged by a short position in shares. The same applies to CFDs to the extent they are hedged by transactions resulting in a net short position in shares.</p> <p>On the other hand, the sale of futures (short futures) and the purchase of put options (long puts) are not affected by the ban. This is also true for the sale of a call option (short call).</p>				

IRELAND

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Financial Regulator amended the Market Abuse Rules (September 2008) by introducing rules prohibiting short selling of stocks of Irish publicly quoted banks effective from midnight on September 18, 2008 requiring disclosure of certain short positions from September 23, 2008.</p> <p>The Financial Regulator has not stated when the measures will terminate but will keep them under continuous review.</p>	<p>A person, other than a market maker, may not enter into any transaction or arrangement after September 18, 2008 which has the effect of generating a net economic benefit which would arise from a fall in the price of the shares in an Irish publicly quoted bank.</p> <p>The prohibition applies to any new short positions, including increases in existing short positions.</p> <p>Where a person had an existing short position on September 18, 2008, the rule does not prevent that short position being continued, reduced or closed out.</p> <p>Where a net short position arises, but does not arise because the person entered into transactions after September 18, 2008 to create that short position, the prohibition does not apply but the disclosure obligation may apply.</p> <p>A short position may be established post September 19, 2008, provided the short position offsets or partially offsets a long position in relation to the same company.</p>	<p>The restrictions apply to stocks of Irish publicly quoted banks. These are listed in Rule 10.1 of the Market Abuse Rules as:</p> <ul style="list-style-type: none"> ▪ The Governor and Company of the Bank of Ireland; ▪ Allied Irish Banks Plc; ▪ Irish Life and Permanent Plc; and ▪ Anglo Irish Bank Corporation. 	<p>Disclosure is required by any person who holds an economic interest involving 0.25 per cent. or more (<i>i.e.</i> the aggregate net short position of 0.25 per cent. or above) of the issued shared capital of one of the Irish publicly quoted banks.</p> <p>Individual short and long positions underlying the net position do not need to be disclosed.</p> <p>Disclosure must be made:</p> <p>(a) By 3.30 p.m. on each day on and after September 23, 2008 (even if the size of the net short position has not changed since the previous disclosure);</p> <p>(b) Using an RIS system. Disclosure can be made directly to an RIS, with simultaneous notification to the Company Announcements Office (the "CAO") of the Irish Stock Exchange Limited. Alternatively, indirect disclosure can be made to an RIS through the CAO.</p> <p>The disclosure must set out the name of the person who has the position, the company in which the position is held, the percentage of</p>	<p>Persons acting in the capacity of market makers are exempt from the prohibition.</p> <p>Market making positions are exempt from the disclosure obligations.</p> <p>A market maker:</p> <ul style="list-style-type: none"> ▪ Is a person who is or has been operating as a market maker ordinarily as part of their business; and ▪ Includes persons recognized as a market maker by a Market Operator. 	<p>The Financial Regulator has indicated that shorting of the ISEQ Index, although covered by the rules as drafted, will not result in any action on its behalf, but this will be kept under review.</p> <p>The prohibition and disclosure obligations apply to all ways in which an economic interest, direct or indirect, can be created, including spread betting and CFDs.</p> <p>The prohibition and disclosure obligations apply throughout the day, including short positions taken intra-day and closed-out before the end of the day.</p> <p>The prohibition and disclosure obligations apply to any person benefiting from creating a short position, including a contracting party and an intermediary who assists in putting the transaction or arrangements in place. The guidance indicates that the person should understand the purpose or consequence of such transactions/arrangements.</p>

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			<p>the issued share capital of the company and the amount of the position.</p> <p>If the net short position that has previously been notified falls below 0.25 per cent, the Financial Regulator must be informed.</p>		

ITALY

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>Consob, the Italian securities markets regulator, has adopted four subsequent measures on short sales of shares.</p> <p>On September 22, 2008, Consob issued Resolution 16622, which provided for a prohibition on “naked” short sales of bank and insurance company shares. Resolution 16622 became effective at 00.01 a.m. on September 23, 2008 and expired at 11.59 p.m. on October 31, 2008.</p> <p>On October 1, 2008, Consob issued Resolution 16645, which expressly prohibited all short sales of such shares. Resolution 16645 became effective at 2.00 p.m. on October 1, 2008 and expired at 11.59 p.m. on October 31, 2008.</p> <p>On October 10, 2008, Consob issued Resolution 16652, which provided for a prohibition of all short sales of shares of any company listed and traded on Italian regulated markets. Resolution 16652 extended the expiration date set forth in Resolution 16645 to 11.59 p.m. of December 31, 2008.</p> <p>On December 30, 2008, Consob issued Resolution No. 16765 which provides for (i) a prohibition on “naked” short sales of shares of any</p>	<p>By virtue of Resolution 16765, from January 1, 2009 to January 31, 2009:</p> <p>(i) The sale of shares of all companies listed and traded on Italian regulated markets can be effected only when the ordering party has the right of disposal of the shares even without being the title holder (i.e., “naked” short sales are prohibited);</p> <p>(ii) The sale of shares of the Affected Banks and Insurance Companies and of their holding companies can be effected when the ordering party has full legal title in addition to the right of disposal of the shares² (i.e., all short sales are prohibited); and</p> <p>(iii) The sale of shares of companies listed and traded on Italian regulated markets which are in the process of a capital increase can be effected only when the ordering party has full legal title in addition to the right of disposal of the shares (i.e., all short sales are prohibited)³.</p> <p>The title and right of disposal of the shares must exist from the time of submission of the sale order through the time of settlement of the relevant trade.</p>	<p>The provision under (i) applies to any share of a company listed and traded on Italian regulated markets.</p> <p>The provisions under (ii) and (iii) apply to the shares of the Affected Banks and Insurance Companies and of their holding companies and to the shares of companies which are in the process of a capital increase.</p>	<p>None.</p>	<p>These prohibitions and restrictions do not apply to the activities carried out, in the performance of their functions by:</p> <p>(i) Market makers referred to under Article 1, paragraph 5-<i>quater</i> of Legislative Decree No. 58 of February 24, 1998; and</p> <p>(ii) Specialists and liquidity providers as defined in the Listing Rules of the regulated markets organized and managed by Borsa Italiana S.p.A.</p>	<p>The operators of the clearing and settlement systems are required to adopt any and all measures to prevent stock market speculations which may cause an unusual price decrease of the affected shares.</p>

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>company listed and traded on the Italian regulated markets, and (ii) a prohibition of all short sales of shares of banks and insurance companies named in a list attached to such resolution¹ (the "Affected Banks and Insurance Companies") and shares of companies listed and traded on Italian regulated markets in the context of a capital increase. Resolution 16765 became effective at 00.01 a.m. on January 1, 2009 and will expire at 11.59 p.m. on January 31, 2009.</p> <p>These measures were aimed at ensuring the proper conduct of trading and the integrity of the markets, due to the recent evolution of the market situation.</p>					

1

The complete list of banks and insurances companies named in Resolution No. 16765 can be found at: <http://www.consob.it/mainen/documenti/english/resolutions/res16765.htm>.

2

The lending of shares for less than one day (i.e., if the shares are to be returned to the title holder by close of business) does not transfer the right of disposal to the borrower for the purposes hereof; as a result, the right of disposal remains with the title holder.

3

This provision applies starting from the day following the resolution of the board of directors approving the capital increase until the day of delivery of the shares issued pursuant to such capital increase.

LUXEMBOURG

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>On September 19, 2008, the <i>Commission de Surveillance du Secteur Financier (CSSF)</i> issued a press release relating to the prohibition of uncovered (“naked”) short selling in publicly quoted banks and insurance companies (available in English at http://www.cssf.lu/uploads/media/pressrelease_short_selling290908_01.pdf). On September 29, 2008, the CSSF issued a further press release elaborating on the earlier press release (available in English at http://www.cssf.lu/uploads/media/pressrelease_short_selling290908_01.pdf).</p> <p>The CSSF considers such naked short sales to be incompatible with the regulatory requirements governing market conduct, in particular where such sales distort or manipulate the market.</p> <p>Although the prohibition is considered by the CSSF to be of a temporary nature, no definite date for review thereof has been set by the CSSF.</p>	<p>The CSSF prohibits market participants from carrying out naked short sales where the underlying assets are stocks of a credit institution or insurance undertaking admitted to trading on the regulated market of the Luxembourg Stock Exchange (excluding securities admitted to trading on the Euro MTF), whether for its own account or on behalf of clients.</p> <p>When performing such transactions on behalf of their clients, market participants must ensure that the clients are able to deliver the stocks on the settlement date.</p> <p>Uncovered or naked short selling, in this context, means a transaction (including an OTC one) which results in the creation of a net short position or increases any net short position that was held prior to September 19, 2008. Only net (and not gross) short positions are prohibited (provided there is no duration mismatch between the netted positions).</p> <p>Market participants who are long will be able to hedge their long positions by way of buying protection (in particular in the form of derivatives).</p>	<p>The prohibitive measures apply not only to the shares themselves but to all instruments (e.g. CFDs, options, futures or depository receipts) that give rise to an exposure to the issued share capital of a company, in particular the following institutions:</p> <p>Dexia S.A.</p> <p>Fortis N.V./S.A.</p> <p>Foyer S.A.</p>	<p>There are no particular disclosure requirements.</p>	<p>Market makers are generally exempt from the new short selling prohibitions. This exemption covers market makers only when, in the particular circumstances of each transaction, they are acting in that capacity and with the intention of providing liquidity and exercising genuine market making activities.</p>	<p>In the event that Luxembourg market participants enter into transactions in respect of securities admitted to trading on any other regulated market, they must apply the rules as set out by the competent regulator of that regulated market.</p>

THE NETHERLANDS

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	NOTIFICATION OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Netherlands Authority for the Financial Markets (“AFM”) has adopted measures effectively prohibiting short selling of certain Dutch financial enterprises.</p> <p>Anyone contravening the prohibition will be regarded by the AFM as having committed market manipulation, prohibited by Section 5:58 of the Financial Supervision Act.</p> <p>The measures came into effect on October 5, 2008, initially applying for a period of 30 days. The AFM extended the measures on October 31, 2008 until January 17, 2009. On January 13, 2009, the AFM has again extended the measures this time until February 28, 2009.</p> <p>On October 10, 2008, the AFM published new measures which came into effect on October 11, 2008. Substantively speaking, there is no difference between the new measures and the measures of October 5, 2008. These latest measures have been adopted in connection with the entry into force on October 11, 2008 of legislation on the basis of which, amongst other things, it is stated beyond all doubt that the AFM can take measures</p>	<p>It is prohibited to enter into a transaction or to place a trading order that (either by itself or in combination with other transactions or trading orders) has the following effect:</p> <p>(a) creating a net short position in a financial enterprise; or</p> <p>(b) increasing a net short position in a financial enterprise which position existed before October 5, 2008.</p> <p>The prohibition does not apply to a transaction entered into or a trading order placed prior to October 5, 2008.</p> <p>“Net short position” means a net short position giving rise to an economic exposure to the issued share capital of a financial enterprise. In calculating whether one holds a short position, every form of economic interest in the issued capital of the financial enterprise concerned should be included.</p> <p>Such economic interest can be created by any financial instrument that gives rise, directly or indirectly, to an exposure to the issued share capital of a financial enterprise.</p>	<p>The AFM has produced the following list of financial enterprises:</p> <p>Aegon N.V.</p> <p>ING Groep N.V.</p> <p>Fortis N.V.</p> <p>BinckBank N.V.</p> <p>Kas Bank N.V.</p> <p>SNS Reaal N.V.</p> <p>Van der Moolen Holding N.V.</p> <p>Van Lanschot N.V.</p>	<p>A person that holds or obtains a “notifiable short position” in a financial enterprise, regardless of how and when this position has arisen, is required to make “proper contiguous notification” of that position.</p> <p>“Proper contiguous notification” means notification to the AFM not later than the working day following each day on which the notifiable short position is held.</p> <p>“Notifiable short position” means a net short position representing an economic interest in the total issued capital of the financial enterprise concerned of 0.25% or more.</p> <p>If a person’s net short position falls below the 0.25% threshold, then one last notification of that fact is required.</p> <p>Where a person has a structure that includes more than one legal entity, the notification should be made at the group level, provided the notification clearly states which positions belongs to which entity. All the positions within the group must be aggregated.</p>	<p>Those acting in the capacity of market maker are exempt from the new rules (<i>i.e.</i> from both the prohibition and the notification requirement).</p> <p>“Market maker” for these purposes is a person or entity that, ordinarily as part of its business, deals as principal in equities and/or derivatives (whether OTC, exchange-traded or on an MTF) in a way that ordinarily has the effect of providing liquidity on a regular basis to the market on both bid and offer sides of the market in comparable size. Trading in circumstances other than genuinely for the provision of liquidity is not exempt. Market makers are not expected to hold significant short positions, other than for brief periods.</p> <p>A person or an entity does not have to be a market maker within the definition of the Euronext Rulebook to take advantage of the exemption, nor does it have to be registered with an exchange or platform.</p>	<p>Investment Managers:</p> <p><i>Non-discretionary clients:</i></p> <p>Where the investment manager manages on a non-discretionary basis, both the prohibition and the notification obligation apply to the client, although the manager can make a notification on behalf of the client (provided the client is clearly identified).</p> <p><i>Discretionary clients:</i></p> <p>Where an investment manager manages on a discretionary basis and where client positions are segregated from the manager and from each other in one or more accounts, the prohibition applies at the level of the individual clients.</p> <p>Where the investment manager manages collective investment schemes on a discretionary basis, the prohibition applies at the fund level. If the fund in question is an umbrella fund with a number of sub-funds, the prohibition applies at the sub-fund level.</p> <p>The notification obligation applies at the level of both the person to which the prohibition applies and at the</p>

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<p>against short selling.</p> <p>Both the term and the contents of the measures can be modified in the meantime. The AFM has set out answers to frequently asked questions (see www.afm.nl). The AFM may publish additional FAQs or clarify existing ones as further questions arise. Not all FAQs are discussed in this overview.</p>	<p>The rules apply to both uncovered and covered short positions and apply to OTC and on-exchange transactions. They apply to all transactions executed in or from the Netherlands, regardless of the trading platform on which the transaction takes place.</p>				<p>level of the investment manager, although the manager can make notifications on behalf of clients.</p> <p>In respect of itself, the investment manager is required to notify its aggregate net short position across all of the funds it manages on a discretionary basis.</p> <p>Different trading desks:</p> <p>If trading desks within a firm are housed within the same legal entity, the aggregate position of the legal entity (across all desks holding positions in financial companies) would be expected to apply for these purposes, excluding positions taken under the market maker exemption.</p>

NON-EU JURISDICTIONS

AUSTRALIA

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Australian Securities and Investments Commission ("ASIC") lifted the ban on covered short selling of non-financial securities as of opening of trading on November 19, 2008, subject to revised disclosure and reporting requirements.</p> <p>The ban on covered short sales of "financial securities" is expected to remain in place until at least January 27, 2009.</p> <p>The Corporations Amendment (Short Selling) Act 2008 (the "Act") became law on December 11, 2008. The Act imposed a legislative ban that commenced on January 8, 2009, and effectively bans all naked short selling, subject to certain exemptions.</p> <p>The Act removed all but one of the exemptions to naked short selling previously contained in the Corporations Act.</p> <p>The current exemptions for naked short selling in the Corporations Regulations continue to apply. It is anticipated, however, that</p>	<p>Covered short selling of financial securities and naked short selling (subject to certain exceptions).</p>	<p>The ban on covered short selling currently applies to "financial securities" only. ASIC has confirmed that financial securities comprise S&P/ASX 200 Financials (including property funds) plus five other APRA regulated entities not in this index.</p> <p>The ban on naked short selling applies to all securities, subject to certain exceptions.</p>	<p>The Act provides a disclosure regime for permitted covered short selling. However, the commencement date for the new disclosure regime is yet to be proclaimed and the disclosure regime draft regulations are yet to be released.</p> <p>In the meantime, the current position is that where covered short selling is permitted, the short selling transaction needs to be disclosed.</p> <p>These reporting requirements are equivalent to end of trading day net short sale position disclosure under the ASX Market Rules. The reporting requirements came into effect on September 19, 2008, and apply to trading from September 22, 2008. Reporting requirements also apply to certain naked short positions in trading of exchange traded options.</p> <p>As part of lifting the ban on non-financials, ASIC with ASX has put in place disclosure and reporting arrangements that also apply to on-market short sales and off-market crossings.</p>	<p>Exemptions for covered short selling of financial securities are available for:</p> <ul style="list-style-type: none"> ▪ Certain hedging by market makers in certain circumstances; ▪ Certain arbitrage transactions; ▪ Hedging in relation to obligations to underwrite a dividend/distribution reinvestment plan; ▪ Hedging being issued securities on conversion of a convertible that converts by reference to a VWAP; ▪ Hedging of pre-September 22, 2008 exposures; ▪ Certain dealing in government bonds; ▪ Sales of products in certain circumstances where a contract for purchase of products existed prior to a contract to sell the products; and ▪ Sales of products where there is delivery within three days, certain other conditions are met and delivery is not achieved using borrowed products. 	<p>The Act has clarified ASIC's powers to omit, modify or vary parts of the Corporations Act relating to short selling and transactions with a substantially similar market effect.</p> <p>ASIC confirmed on January 7, 2009 that the no action position for owners selling from stock lending portfolios continues.</p>

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<p>Regulations 7.9.79 and 7.9.80A will be omitted in the first part of 2009 and replaced with Class Order exemptions that provide similar relief.</p>				<p>The exemptions in place for naked short selling relate to:</p> <ul style="list-style-type: none"> ▪ The giving or writing of certain exchange traded call options; ▪ Unobtained financial products; and ▪ Certain corporate bonds, debentures and government bonds. 	

BRAZIL

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Brazilian Securities Exchange Commission (“CVM”) published on October 14, 2008 an explanatory note prepared as a response to a media release of the IOSCO Technical Committee Members’ Initiatives Relating To Restrictions on Short Sales. The CVM stated in the note that Brazil already had considerable restrictions and procedures in place relating to short selling. As a result, it did not find sufficient evidence of abusive short selling in the Brazilian market. The note also states that the existing legal, regulatory and self-regulatory framework within which short selling transactions are conducted provides an adequate regulatory environment for short selling.</p> <p>Currently, the Brazilian Clearing and Custody Corporation (“CBLC”), the clearing house for the São Paulo Stock Exchange (the “Bovespa”), is the only institution authorized by CVM to offer securities lending services (National Monetary Council Resolution (CMN) No. 3.539 of February 28, 2008 and Instruction CVM No. 441 of November 10, 2006).</p> <p>The CBLC is responsible for the settlement of all trades, including short selling transactions, and for regulating its operating procedures. In its regulations relating to operating procedures, the CBLC sets out</p>	<p>The CVM took the position that it has not identified evidence of any market abuse related to short selling transactions. For this reason, CVM stated that there is no need for any additional prohibition or restriction in addition to currently applicable constraints, which are embedded in the operating rules of the CBLC.</p>	<p>All short sales are made visible to the CBLC at the time of settlement if the investor is compelled to obtain a loan of securities from the centralized facility or to purchase shares on the market to cover its sale.</p> <p>The CBLC tracks all securities lending transactions and gathers information regarding the identities of parties, the terms, amounts and market value of the securities on loan and the collateral offered to secure the loan. (Instruction CVM n. 441 of November 10, 2006). The CVM has full access to this information.</p> <p>Additionally, CBLC makes public aggregate information on a daily basis (CBLC Operating Procedures, Chapter VI - item 3.3) regarding the outstanding number of shares of each issuer that have been lent to investors, the value of the outstanding contracts and the percentage of the outstanding shares of an issuer represented by such shares, among other aggregate information regarding the lending facility.</p>	<p>None.</p>	<p>The CBLC limits the exposure of its centralized securities lending facility to individual investors, brokers and shares. The limits are set out by the CBLC under its self-regulatory authority. (Instruction CVM n. 283 of July 10, 1998 and CBLC Operating Procedures, Chapter VI - item 8). The limits are:</p> <ul style="list-style-type: none"> ▪ The facility cannot lend to a single investor more than 3% of the free float of a single issuer; ▪ The facility cannot lend to a single broker more than 6.5% of the free float of a single issuer; and ▪ The facility cannot lend in the aggregate more than 20% of the free float of a single issuer. <p>The CBLC is responsible for monitoring its exposure and may compel a party to close out a position whenever one of the above limits is exceeded.</p> <p>The CBLC requires an investor or its broker to post collateral as a condition to any securities lending transaction (CBLC Operating Procedures, Chapter VI - item 4.3.1).</p> <p>Investors are required to return the securities to the facility on the maturity date. If the securities are not returned at the specified time or the loan is not renewed, investors are deemed to be in default and are assessed</p>

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>rules for covering short sales and for securities lending.</p> <p>Any short sale must be covered by the time required for the deposit of the securities in preparation for the settlement of the trade on T+3. If the seller does not deposit the relevant securities at the proper time, the CBLC will compel the investor to borrow the securities from a central lending facility operated by the CBLC. If the investor does not have sufficient collateral posted in its name, the broker for the trade will have the margin assessed from its net position in the clearing house. If no securities are available for lending in the centralized facility, the settlement of the trade may be postponed while a mandatory buy order is issued on behalf of the investor or the acting broker. In limited circumstances, other measures may be taken to unwind the transaction.</p> <p>Margin requirements for securities lending transactions, which are reviewed continually, have increased slightly in recent weeks with respect to certain shares, reflecting increased volatility in the market for such shares.</p>				<p>finest of 0.2% of the amount of the securities owed.</p> <p>Upon a default, investors must pay twice the fee originally owed for the securities loan until the securities are returned.</p> <p>If the securities are not returned on the maturity date, CBLC may also issue a buy order on behalf of the investor for the purchase of the undelivered securities, enforce the collateral on hand or require the cash settlement of the loan (CBLC Operating Procedures, Chapter VI - item 6).</p>

CANADA

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	EXEMPTIONS	OTHER PROVISIONS
<p>In Canada, emergency measures were taken with respect to short sales of certain financial sector shares. While these measures have now expired, various continuing restrictions exist and there are proposals for new measures, as briefly discussed in the column on the right under 'Other Provisions'.</p> <p>On September 19, 2008, the Ontario Securities Commission (the "OSC") issued a temporary order prohibiting the short selling of securities of certain financial sector issuers inter-listed in the U.S. "as a precautionary measure to prevent regulatory arbitrage" as a result of U.S. initiatives and to promote fair and orderly markets in Ontario. (Temporary Order, In the Matter of Certain Financial Sector Issuers, September 19, 2008).</p> <p>This order was restated on September 22, 2008 to reflect changes made in the United States and to remove an erroneously included issuer.</p> <p>On October, 3, 2008, the order was, in addition to being again amended slightly, extended to October 8, 2008, so as "to parallel the extensions of the SEC Short Selling Orders." (Reasons for the Decision to Extend the Temporary Cease Trade Order, In the Matter of Certain Financial Sector Issuers, October 8, 2008).</p>	<p>The order banned short sales in certain publicly traded securities of financial sector issuers.</p> <p>On September 22, 2008, it was clarified that this applied only to common equity securities.</p>	<p>The order provided a list of certain financial sector issuers that were both (a) listed on the Toronto Stock Exchange ("TSX") and (b) inter-listed in the United States (the "Financial Sector Issuers").</p> <p>Trades on other marketplaces in Canada and over-the-counter trades were also affected.</p> <p>The Financial Sector Issuers were as follows:</p> <p>Aberdeen Asia-Pacific Income Investment Company Ltd. (note that this issuer's name was removed on September 22, 2008 as it is not inter-listed), Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Fairfax Financial Holdings Limited, Kingsway Financial Services Inc., Manulife Financial Corporation, Quest Capital Corp., Royal Bank of Canada, Sun Life Financial Inc., Thomas Weisel Partners Group Inc., The Toronto-Dominion Bank, and Merrill Lynch & Co., Canada Ltd. (which, while not inter-listed, had issued securities exchangeable into securities of Merrill Lynch & Co., Inc.).</p>	<p>The orders (as amended during the process) provided the following exemptions:</p> <p>(i) Short sales conducted in accordance with the Investment Industry Regulatory Organization of Canada's Universal Market Integrity Rules ("UMIR"), Rule 3.1, <i>Restrictions on Short Selling</i>, sections 2(a) (certain program trades), 2(b) (certain market maker trades), (d) (certain derivatives market maker trades) and (g) (certain ETF trades); provided that a dealer fulfilling market maker obligations may not effect a short sale in the common equity securities of the Financial Sector Issuers if the market maker ought reasonably to know that the client's or counterparty's transaction will result in the client or counterparty establishing or increasing an economic net short position (<i>i.e.</i> through actual positions, derivatives or otherwise) in the issued share capital of a Financial Sector Issuer covered by the temporary order;</p> <p>(ii) "Block facilitation" short sales conducted by a registered dealer as principal to facilitate with a client or counterparty (a) a securities transaction that has a current market value of \$200,000 or more in a single transaction, or in several transactions at approximately the same time, provided that the position is liquidated or hedged as soon as possible; or (b) a derivatives transaction</p>	<p>The emergency rules discussed in the columns on the left have now expired, but it is worth remembering that short sales in Canada remain subject to a number of restrictions, including:</p> <ul style="list-style-type: none"> • The obligation to inform the selling dealer that a short sale is occurring; • A prohibition, with certain exceptions, on selling on a "downtick" (and special requirements apply to entering short sale orders prior to market opening and in the case of dividends or distributions); • A "soft" locate requirement (the regulator has indicated that one should have a "reasonable expectation" of settling any trade); and • Restrictions on insiders, including directors, officers and over 10% voting shareholders, of <i>Canada Business Corporations Act</i> incorporated companies from effecting short sales. <p>Brokers selling shares that constitute short sales are required to mark the trade as a short sale (or, in certain cases, as a "short exempt" trade, if that marker is available), and the "bundling" of both short and long positions as a single order is restricted.</p>

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	EXEMPTIONS	OTHER PROVISIONS
<p>The order expired at 11:59 p.m. on October 8, 2008.</p>			<p>that has a notional value of \$200,000 or more in a single transaction, or in several transactions at approximately the same time, certain transactions valued at over \$200,000, provided that they are liquidated or hedged as soon as possible, and in each case provided further that a dealer may not effect a short sale in the common equity securities of the Financial Sector Issuers if the dealer ought reasonably to know that the client's or counterparty's transaction will result in the client or counterparty establishing or increasing an economic net short position (<i>i.e.</i> through actual positions, derivatives or otherwise) in the issued share capital of a Financial Sector Issuer covered by the temporary order;</p> <p>(iii) Short sales conducted in order to comply with UMIR Rule 5.2, <i>Best Price Obligation</i>;</p> <p>(iv) Short sales conducted by a person or company as a result of the automatic exercise or assignment of an equity option, or in connection with settlement of a futures contract, held prior to the effectiveness of the order due to expiration of the option or futures contract;</p> <p>(v) Short sales that are sales of a security subject to any restriction on sale imposed by applicable securities legislation or by an Exchange or QTRS as a condition of the listing or quoting of the security, where the security is beneficially owned by the seller and the sale is made under an exemption</p>	<p>Note that a short sale is deemed (see section 3.1 of IIROC's Universal Market Integrity Rules) to include settling with borrowed stock, selling restricted securities (with special requirements applying to sales of U.S. restricted stock), or where the securities would expect to be received as a result of certain other transactions after the ordinary course settlement date of the sale.</p> <p>As well, legended or otherwise restricted securities may not constitute "good delivery" of the securities in question, and may also not be able to be used to settle a short sale borrowing. Finally, off-exchange sales are restricted in Canada, in order to enhance transparency, and brokers are considered "gatekeepers" and may as a result be required to report violations to regulators.</p> <p>On October 15, 2008, the Canadian SRO, IIROC, introduced further proposals, subject to comment in certain cases, to further regulate both short sales and failed trades. These will require reporting of failed trades after 10 trading days, limit the ability to cancel or vary executed trades, and allow IIROC to designate certain securities as ineligible for short sales entirely. They may also involve the imposition of hard "pre-borrow" requirements in the case of persons who have executed failed trades, the possible amendment to or removal of current short sale price restrictions and the potential removal of current requirements to file bi-monthly aggregate short position reports.</p>

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	EXEMPTIONS	OTHER PROVISIONS
			<p>from the prospectus requirements in accordance with applicable securities legislation (e.g. sales of Canadian "restricted" securities, such as those legended or otherwise subject to resale restrictions, that are sold to an accredited investor acting as principal);</p> <p>(vi) Short sales conducted to adjust a hedged derivative position in order to maintain the risk exposure either hedged under (ii) above or that existed at the time the order became effective; and</p> <p>(vii) Short sales conducted by a writer of a call option that effects a short sale in a common equity security of a Financial Sector Issuer as a result of assignment following exercise by the holder of the call.</p>	

HONG KONG

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	
<p>The Securities and Futures Commission ("SFC"), Hong Kong's securities and futures markets regulator, has issued several press releases on short selling in Hong Kong.</p> <p>Some of the key points raised in the latest press releases include the following:</p> <ul style="list-style-type: none"> ▪ Naked short selling has always been unlawful in Hong Kong pursuant to section 170 of the Securities and Futures Ordinance (Cap 571) ("SFO"). ▪ Only covered short selling for certain designated securities as prescribed by the Stock Exchange of Hong Kong ("SEHK") is permitted. Short selling is governed by the Eleventh Schedule of the SEHK Trading Rule ("the Eleventh Schedule"). ▪ Short selling may be executed only on the SEHK at or above the best current asking price (the "tick rule"). There were proposals earlier in the year to scrap the tick rule, but that has now been withdrawn in light of the market situation. ▪ The rules also require a full audit 	<p>There has been no significant change in the position in Hong Kong recently in relation to short selling.</p> <p>Only covered short selling for certain designated securities as prescribed by the SEHK is permitted.</p> <p>Naked short selling is strictly prohibited in Hong Kong.</p>	<p>Any share of a company listed and traded on the SEHK.</p>	<p>Pursuant to section 172 of the SFO, all market participants, when conducting short selling which is permitted by the SEHK, are required to flag the order as a short selling order in the SEHK trading system.</p>	<p>The position of liquidity providers and market makers in securities is different from that of other market participants in relation to the application of the legal and regulatory requirements on short selling.</p> <p>The Commission's Guidance Note on Short Selling Reporting and Stock Lending Record Keeping Requirements published in March 2003 (the "Note") states that market makers / liquidity providers of warrants are permitted to sell short the underlying securities of the securities for which they provide market making / liquidity providing functions, to hedge their market making / liquidity providing positions (paragraph 2.5.4 of the Note).</p> <p>The SFC has made, under sections 170(3)(e) and 397 of the SFO, section 3 of the Securities and Futures (Short Selling and Securities and Borrowing and Lending (Miscellaneous) Rules) to disapply section 170(1) to all market makers and liquidity providers (i.e. to permit naked short selling by all market makers and liquidity providers) (paragraph 2.5.1 of the</p>	<p>The Eleventh Schedule sets out regulations which apply generally to short sales. However, for Designated Index Arbitrage Short Selling, Stock Futures Hedging Short Selling, Structured Product Hedging Short Selling, Options Hedging Short Selling and Structured Product Liquidity Provider Short Selling, the Fifteenth Schedule ("the Fifteenth Schedule") and the Eighteenth Schedule ("the Eighteenth Schedule") of the SEHK Trading Rules ("the Rules") apply.</p> <p>The Fifteenth Schedule states that notwithstanding anything to the contrary contained in the Rules, Designated Index Arbitrage Short Selling, Stock Futures Hedging Short Selling, Structured Product Hedging Short Selling and Options Hedging Short Selling shall be conducted in accordance with the regulations contained in the Fifteenth Schedule.</p> <p>Similarly, the Eighteenth Schedule states that notwithstanding anything to the contrary contained in the Rules, Structured Product Liquidity Provider Short Selling by a Structured Product Liquidity Provider shall be conducted in accordance with the regulations</p>

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	
<p>trail to be kept for covered short sales (<i>i.e.</i> when clients place short selling orders, they must provide documentary confirmation to their brokers or agents that the sale is shorted and it is covered).</p> <ul style="list-style-type: none"> ▪ There is no temporary ban on covered short selling. 				<p>Note).</p> <p>The Eleventh Schedule does not apply to Securities Market Maker Short Selling, Structured Product Liquidity Providers Short Selling, Designated Index Arbitrage Short Selling, Stock Futures Hedging Short Selling, Structured Product Hedging Short Selling and Options Hedging Short Selling.</p>	<p>contained in the Eighteenth Schedule.</p> <p>Under the SEHK Trading Rules, the "tick rule" generally applies to short sales, meaning that a sale cannot be effected below the best current asking price. However, for Designated Index Arbitrage Short Selling, Stock Futures Hedging Short Selling, Structured Product Hedging Short Selling, Options Hedging Short Selling and Structured Product Liquidity Provider Short Selling, the Fifteenth Schedule and the Eighteenth Schedule provide that such sales can be effected at below the best current asking price.</p>

INDIA

Short selling is not prohibited in India by the Securities and Exchange Board of India ("SEBI"), the financial regulator. In fact, in terms of SEBI Circular dated December 20, 2007 and RBI circular dated December 31, 2007, the category of persons who can lawfully engage in short selling has been widened to include institutional investors. Prior to this measure, only retail investors were allowed to short sell. It is now possible for institutional investors, such as Foreign Institutional Investors ("FIIs") to engage in short selling, and arrangements have been put in place for a securities lending and borrowing scheme to facilitate short sales. The new regime includes the following requirements:

- Naked short selling is not permitted in the Indian securities market. Hence, all investors selling securities must be able to honor their commitments to deliver the sold securities at the time of settlement.
- Furthermore, institutional investors are not permitted to engage in "day trading", *i.e.* squaring off their transactions intra-day. In other words, all transactions will be grossed for institutional investors at the custodians' level and the institutions are required to fulfill their obligations on a gross basis. The custodians, however, may continue to settle their deliveries on a net basis with the stock exchanges.
- When placing an order in a short selling transaction, institutional investors must disclose upfront the fact that the transaction is a short sale. Retail investors must also make such disclosures, although they are allowed to make disclosure at the end of the trading hours on the date of the transaction.
- All short sales must comply with the prescribed process provided for by the exchanges.

In addition to short selling on the Indian exchanges, FIIs have also been engaged in borrowing and lending of Indian stocks on an offshore basis. This process is undertaken by FIIs who hold idle stocks on behalf of their clients against Overseas Derivative Instruments (ODIs) issued to them. These underlying securities are lent by the FIIs to off-shore entities (not registered with SEBI) at an offshore level, thereby influencing valuations directly and creating selling pressure on the underlying stocks in the Indian market. Further, such overseas lending is not regulated either in the offshore market or by SEBI within India.

In light of the above, vide press releases issued on October 15 and 16, 2008, SEBI instructed FIIs/sub-accounts to disclose details of the quantity of the securities lent to entities outside India, *i.e.* jurisdictions where ODIs are issued by the FII, twice a week, on a consolidated basis. Upon a perusal of the data collected in this manner, the SEBI Chairman issued a press release on October 20, 2008 expressing his disapproval of stock lending activities on Indian securities undertaken by FIIs abroad. This disapproval was further reiterated by the Chairman in a meeting with the FII industry on October 22, 2008. In view of the above, the possibility of a formal ban on such overseas lending in the event FIIs fail to curb fresh borrowings overseas cannot be ruled out.

Simultaneously, in order to persuade FIIs to cease overseas lending and borrowing and use the securities lending and borrowing scheme in India instead, SEBI has taken a re-look at the short selling mechanism established in India. Consequently, SEBI Circular dated October 31, 2008 has introduced the following changes:

- Stocks can now be lent/borrowed for 30 days instead of seven days.
- Market timings for the stock lending and borrowing session have been increased from the present one hour to the normal trade timings of 9:55 am to 3:30 pm.

These changes are a step forward towards bringing the domestic short selling scenario at par with the international regime. SEBI is likely to introduce further amendments to the current securities lending/borrowing process in the future and press reports indicate that this may include (i) reduction in the SLB margins and (ii) anonymity in SLB transactions.

JAPAN

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>Japan's Financial Services Agency has expressed its intention to cooperate with the Securities and Exchange Surveillance Commission and the stock exchanges to conduct a thorough monitoring of market manipulation and other market abuse, including stricter enforcement of restrictions on short selling.</p> <p>In addition to the above measures, on October 14, 2008, the Financial Services Agency requested the stock exchanges to institute enhanced disclosure requirements in relation to short selling.</p> <p>On October 28, 2008, the Financial Services Agency, the Securities and Exchange Surveillance Commission and the Tokyo Stock Exchange began a joint investigation of any past violations of existing short selling restrictions.</p>	<p>There have been no new prohibitions or restrictions on short selling in Japan, but the following restrictions have already been in place with regard to trading of all listed stocks:</p> <p>(i) Traders are required to verify and mark whether or not the transactions in question are short selling; and</p> <p>(ii) Short selling is prohibited, in principle, at prices not higher than the latest market price announced by the stock exchange concerned.</p> <p>On October 28, 2008, the Financial Services Agency of Japan announced that it will be adopting regulations, to be effective November 4, 2008, to prohibit naked short selling of stocks. As an interim measure until these regulations are adopted, the Financial Services Agency requested stock exchanges to not take naked short selling orders.</p> <p>The above prohibition on naked short selling of stocks was implemented earlier than scheduled on October 30, 2008.</p>	<p>The enhanced disclosure obligation of the stock exchanges applies to all stocks.</p>	<p>On October 14, 2008, the Financial Services Agency requested stock exchanges to enhance their disclosure requirements regarding short sales. Specifically, whereas previously only the aggregate price of short selling regarding all stocks on a monthly basis was requested, now the aggregate price of short selling regarding all stocks and aggregate price of short selling by sector (33 sectors in total) on a daily basis is required.</p> <p>On October 28, 2008 the Financial Services Agency announced that it will be adopting additional regulations, to be effective in mid-November, to require short sellers holding a position equal to or greater than a certain amount (to be, in principle, 0.25% of the total issue of the relevant stock) to disclose such position to the stock exchanges through their securities firm. The stock exchanges will be required to publish such information. All of the new regulations will be temporary for the time being.</p> <p>The above reporting requirement was implemented earlier than scheduled on November 7, 2008.</p>	<p>None regarding the new disclosure obligation.</p>	

PEOPLE'S REPUBLIC OF CHINA

Short selling is not currently allowed in China. The relevant government authorities in China have nonetheless been drawing up plans to approve margin trading and short selling of shares as part of their efforts to develop local markets since 2006 by promulgating rules and regulations on margin trading and short selling. However, the introduction of these practices has been delayed due to various reasons. In order to improve the liquidity of the securities market of China and provide investors with a new tool for risk management, the China Securities Regulatory Commission ("CSRC") announced the trial introduction of margin trading and short selling of shares on October 5, 2008, despite global market turmoil and recent moves to limit short selling elsewhere around the world. On December 1, 2008, the CSRC promulgated the [Interim Regulations on the Examination and Approval of the Business Scope of Securities Companies](#) (the "Regulations"), which became effective as of the same day. According to the Regulations, securities companies may submit applications to the CSRC for providing margin trading and short selling brokerage services and the CSRC is required to give its approval or disapproval within 45 days upon receiving such applications. It is not known to the public how many securities companies have submitted such applications to the CSRC, if any, but as of the date of this note, none of the securities companies in China have been approved to provide margin trading and short selling brokerage services. On January 5, 2009, the CSRC further announced that it will start the trial introduction of margin trading and short selling of shares soon, but no timetable has been given yet.

RUSSIA

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Federal Financial Markets Service (FFMS) reintroduced a ban on short selling on Tuesday 30 September, 2008. This was introduced to stabilise the Russian stock markets, following a sharp drop in prices the previous day.</p> <p>The ban was introduced for an indefinite term and the FFMS recently announced that restrictions would remain in place until at least the end of 2008.</p>	<p>The ban prohibits all short selling of securities listed on a regulated market in Russia. The ban relates to on-exchange transactions only.</p>	<p>All stocks listed on a regulated Russian market are affected.</p> <p>The ban is of a general nature, and there is no specific list of securities to which it applies.</p> <p>The ban does not apply to derivatives that have securities and stock indices as underlying assets.</p>	<p>The ban does not introduce any additional disclosure requirements.</p>	<p>The restriction on short selling does not apply where the short seller has posted a bid for the purchase of the relevant securities before the close of trading on the settlement date of the short sale. (However, the purchase side of a repo transaction does not fall within this exemption).</p> <p>Derivatives that have securities and stock indices as underlying assets are also exempt.</p>	

SINGAPORE

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>Existing Measures</p> <p>On September 22, 2008, Singapore Exchange Limited (the "SGX") issued a Clearing Directive to introduce measures, including penalties, to deter failed deliveries of securities in the ready market and the buying-in market. However, no prohibitions or disclosure obligations specific to short selling were imposed by the SGX. The press releases dated September 22, 2008 announcing the issue of the Clearing Directive and September 26, 2008 clarifying the operation of the measures introduced are available at http://info.sgx.com/webnewscentre.nsf/News+Articles+-+All?OpenView.</p> <p>Securities quoted on the securities exchange of the SGX, Singapore Exchange Securities Trading Limited (the "SGX-ST"), are traded under the book-entry settlement system of The Central Depository (Pte) Limited ("CDP"), a wholly-owned subsidiary of the SGX. CDP acts as a depository and clearing organization by holding securities for its account holders and facilitating the clearance and settlement of securities transactions between its account</p>	<p>With effect from September 25, 2008, the following penalties will be imposed on CDP's clearing members for failed deliveries via written notification:</p> <p>(i) <i>All failed deliveries</i>: Five per cent. of the value of a failed trade (subject to a minimum of S\$1,000); and</p> <p>(ii) <i>Failed deliveries in the buying-in market</i>: An additional S\$50,000 and/or disbarment from participation in the buying-in market.</p> <p>The minimum penalty of S\$1,000 will be reviewed by the SGX from time to time to assess its effectiveness in deterring settlement failure.</p>	<p>All securities, including structured warrants and certificates, which are quoted on the SGX-ST.</p>	<p>There are no disclosure obligations for market participants. Since September 23, 2008, however, the SGX has published the daily list of buying-in securities and details of the prices and volumes of shares bought-in on its website at http://info.sgx.com/webcorannc.nsf/newwanncbybuyingin?openview to keep the investing public informed of the short selling activities that fail delivery.</p>	<p>N/A</p>	<p>A clearing member may lodge an appeal with the SGX to waive the penalty imposed within three business days from the date of receipt of the notification of penalty. The SGX will assess each individual appeal, taking into account relevant factors including the intent behind the trade, the profile of the trade/traders, as well as the impact of the trade on the integrity of the settlement process, and inform the clearing member of the results of its appeal in writing within 10 business days from the date of the notification.</p>

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>holders through electronic book-entry changes in the securities accounts maintained by its account holders. When naked short selling results in a failed delivery of securities to CDP on the settlement date, CDP is required to close-out the short sale transaction by buying-in from the buying-in market. Where buying-in is unsuccessful, CDP will require the clearing member who failed to deliver securities to procure the sold securities from the ready market to cover open positions.</p> <p>On October 21, 2008, the SGX issued a press release (available at http://info.sgx.com/webnewscentre.nsf/News+Articles+--+All?OpenView) announcing that the measures introduced have been successful, as there has been only a few isolated incidences of failed delivery in the buying-in market and a significant reduction in failed deliveries in the ready market.</p>					
Proposed Measures					
<p>The SGX issued consultation papers on November 13, 2008 and November 27, 2008 to seek public feedback on a permanent penalty framework for failed deliveries and further measures to enhance the transparency of short selling activities, respectively. The</p>	<p>The proposed permanent penalty framework incorporates the penalties introduced under the Clearing Directive, as follows:</p> <p>(i) <i>Failed deliveries in the ready market</i>. A penalty of five per cent of</p>	<p>No changes proposed.</p>	<p>The following additional measures to enhance the transparency of short selling activities are proposed:</p> <p>(i) Requiring all selling orders for securities traded on the SGX-ST to be marked at the point of order entry</p>	<p>N/A</p>	<p>No changes have been proposed in respect of the appeal process to waive penalties imposed for failed deliveries in the ready market.</p> <p>Clearing members who are referred to the Disciplinary Committee will</p>

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>consultation papers are available at http://info.sgx.com/SGXWeb_RMR.nsf/NEWDOCNAME/Public_Consultation.</p>	<p>the value of a failed trade (subject to a minimum of S\$1,000), to be imposed via written notification;</p> <p>(ii) <i>Failed procurement to cover open positions</i>: A penalty of S\$5,000 per day for each sold contract, to be imposed via written notification. If there is continued failure to procure (i.e. failure to procure after two days), the clearing member will be referred to CDP's Disciplinary Committee and subject to a minimum penalty of S\$50,000 if found to be culpable; and</p> <p>(iii) <i>Failed deliveries in the buying-in market</i>: The clearing member will be referred to the Disciplinary Committee and subject to a minimum penalty of S\$50,000 and/or disbarment from participation in the buying-in market if found to be culpable.</p> <p>To reinforce the gravity of how failed deliveries threaten the orderliness of the securities market, the SGX proposes that the penalties be cumulative in nature.</p>		<p>to indicate short sales by sellers, and the SGX's publication of the aggregate number of short selling orders transacted for individual counters on a daily basis; and</p> <p>(ii) Imposing obligations on holders of substantial short positions for individual counters to report to the SGX and/or the Monetary Authority of Singapore. A threshold of 1% is proposed as the determinant of "a substantial short position".</p> <p>As a legislative framework would be required to give effect to each of the proposed measures, the SGX anticipates that a time period of at least nine months would likely be needed to implement either one, or both, of the proposed measures.</p>		<p>have the opportunity to present their case before the Disciplinary Committee in accordance with the CDP Clearing Rules.</p>

UNITED ARAB EMIRATES ¹

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Securities and Commodities Authority of the United Arab Emirates (the "SCA") has not addressed short selling in its laws, rules and/or regulations. The SCA has, however, recently made public statements on numerous occasions and said that "short selling" practices were prohibited.</p> <p>Despite the fact "short selling" as such is not prohibited under the legislation, the prohibition can be derived from the SCA's general powers under the SCA Regulation No. 1 of 2000 as to Brokers ("Brokers Regulation") and/or the SCA Regulation No. 2 of 2001 on Trading, Clearing and Settlement ("Trading Regulation").</p>	<p>(i) Under Article 18(14) of the Brokers Regulation, brokers licensed in the UAE are obliged to ascertain the ownership of the securities before they execute an order.</p> <p>(ii) Under Article 5 of the Trading Regulation, brokers licensed in the UAE are not allowed to execute any orders on behalf of the investor that includes borrowing.</p>	All.			Should the SCA find a UAE-licensed broker in breach of the provisions of the Brokers and/or the trading Regulation, it is entitled to withdraw the brokerage license from the broker concerned.

¹

This information is up to date as at October 24, 2008.

This publication is intended only as a general discussion of the issues covered in it. It should not be regarded as legal advice. The description of regulatory action given is not intended to be a comprehensive summary or discussion of regulators' activities and may be subject to further regulatory changes. Furthermore, this publication does not deal with the rules governing specific products or investment vehicles (such as the special restrictions that apply to short selling by UCITS funds in Europe), nor the disclosure or notification obligations applicable generally to financial market participants.

We would be pleased to provide additional details or advice about specific situations if desired. If you wish to receive more information on the topics covered in this publication, you may contact your regular Shearman & Sterling contact person or any of the following:

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