

Economic Stabilization Advisory Group | November 11, 2008

Global Clampdown on Short Selling: an Overview (v3)

Authorities around the world have taken action to prohibit or place regulatory restrictions on short selling.¹ These measures come at a time of deteriorating financial market conditions, prompting large declines in stock market values and the introduction of rescue packages for troubled banks. The 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 purpose of this note is to provide an overview of the global response to short selling. It describes the actions taken in major financial jurisdictions, and provides a summary of the obligations imposed and exemptions available.

The first version of this note was published on October 17, 2008.² An update was published on October 24, 2008.³ Since then, regulators in some jurisdictions have adopted further measures or made amendments to the measures previously adopted.⁴ The current version of the note takes into account those measures and is based on information available to us on November 10, 2008.

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

² Available at http://www.shearman.com/esag_101708/.

³ The following jurisdictions had adopted further or amended previous measures: United Kingdom, Brazil, India, Australia and Singapore. The update is available at http://www.shearman.com/esag_102408/.

⁴ Japan, United Kingdom, Italy, India and The Netherlands.

UNITED STATES OF AMERICA

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	EXEMPTIONS	OTHER PROVISIONS
<p>The Short Sale Ban Order</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 expired on October 8, 2008 with the coming into force of the Emergency Economic Stabilization Act 2008.</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 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. ▪ 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. 	

Form SH Order				
<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 an interim final temporary rule, 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 short position is not net of long position in the issuer.</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 of one percent of that class of the issuer's section 13(f) securities issued and 	

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Amendments to Regulation SHO Order				
<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 ("Rule 204T") and (b) eliminate the "options market maker" exception.</p> <p>On October 14, 2008, the SEC adopted Rule 204T on an interim final temporary basis, expiring on July 31, 2009.</p> <p>On October 14, 2008, the SEC adopted the elimination of the "options market maker exception" as proposed.</p>	<p>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 close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity.</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 position 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; ▪ 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; 	<p>Rule 10b-21: On September 17, 2008, the SEC 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> <p>On October 14, 2008, the SEC adopted Rule 10b-21 substantially as proposed.</p>

	<p>Any participant and related broker-dealer who does not comply with the close-out rules discussed above (a) will be prohibited from accepting a short sale order in the equity security from another person, and (b) 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 (a) and (b) above, the "Penalties").</p> <p>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 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</p>		<ul style="list-style-type: none"> ▪ 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 to close out its open short position (the "Broker Dealer Exemption"). <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 	
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	<p>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>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</p> <ul style="list-style-type: none"> ▪ 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. 	
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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 stocks to be market abuse, by taking the view that such short selling in times of extreme market volatility effectively involves market manipulation.

UNITED KINGDOM

UNITED KINGDOM: MEASURES RELATING TO FINANCIAL STOCKS

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The UK's Financial Services Authority has adopted two new measures (Short Selling (No 2) Instrument and Short Selling (No 3) Instrument) to deal with short selling of financial sector stocks.</p> <p>These measures make a number of amendments to the Code of Market Conduct (which can be found in the MAR sourcebook of the FSA handbook). The Code is published by the FSA and provides authoritative guidance on the market abuse offense (prohibited by section 118 of the Financial Services and Markets Act 2000).</p>	<p>It is market abuse to enter into a transaction that has the effect (on its own or with other transactions) of:</p> <ul style="list-style-type: none"> ▪ creating a net short position in a UK financial sector company; or ▪ increasing any net short position in a UK financial sector company that the person had immediately before September 19, 2008. <p>The restriction does not apply to transactions or orders entered prior to September 19, 2008, nor to net short positions arising purely due to a change in delta as a result of, for example, buy-</p>	<p>The restrictions apply to a net short position in a “UK Financial Sector Company”, <i>i.e.</i> 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>Where an economic interest in a UK Financial Sector Company arises due to a position in a basket of securities, index or an exchange-traded fund and the components of the basket, index or</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.</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 (a) the first day on which the</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 both the prohibition and the 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</p>	<p>Fund managers:</p> <p>If a fund manager holds short positions on behalf of a non-discretionary client, the prohibition and the disclosure obligations apply to the client (although the fund manager can disclose on behalf of a client).</p> <p>In the case of discretionary clients and where an individual fund is housed within a legal entity other than the fund manager, the prohibition applies to the legal entity housing the individual fund. However, the disclosure obligation applies to both the legal entity housing the fund and the fund</p>

<p>Two new evidential provisions are inserted into the Code: paragraph 1.9.2C(E), which effectively makes short selling of financial sector stocks market abuse, and paragraph 1.9.2D(E), which imposes disclosure requirements.</p> <p>The new measures will cease to have effect on January 19, 2009 unless the FSA decides to extend them. The FSA will be publishing a consultation in January 2009.</p>	<p>backs, share issuances or changing market conditions.</p> <p>"Net short position" is any net short position giving rise to an economic exposure to the issued share capital (shares and convertible bonds but not debt securities) of a company.</p> <p>It covers positions arising from any instrument: options, futures, CFDs, spread-bets, etc, whether exchange-traded or OTC.</p>	<p>fund are predominantly UK Financial Sector Companies, then such economic interest must be included when determining whether the person has a net short position or a disclosure obligation.</p> <p>A person is not allowed to short an index that is not predominantly composed of UK Financial Sector Companies and then take long positions in its constituents other than UK Financial Sector Companies, if to do so would result in a new or increased net short position in one or more UK Financial Sector Companies.</p>	<p>position is held; and (b) each day on which the short position changes.</p> <p>If a person's net short position falls below 0.25%, one last disclosure of that fact is required.</p>	<p>requests to trade or to hedge positions arising out of those dealings; and/or</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>New or increased net short positions arising from proprietary trading strategies where the main intention is to create a short position are not exempt.</p>	<p>manager (although the fund manager can disclose on behalf of a fund).</p> <p>Fund managers must disclose their aggregate short position across all the funds that they manage on a discretionary basis.</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>
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UNITED KINGDOM: MEASURES RELATING TO RIGHTS ISSUE SECURITIES			
ACTION TAKEN	OBLIGATIONS	STOCKS AFFECTED	EXEMPTIONS
<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>

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 10.00 a.m. on Monday, September 22, 2008.</p> <p>The rules will cease to have effect on December 21, 2008 unless extended by the CBFA.</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); ▪ putting in place securities lending arrangements prior to selling on the basis of which the securities will be delivered at the latest at 	<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 10.00 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 CBFA has to be on a gross basis.</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>

	<p>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>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>		
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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. They will cease to have effect on December 22, 2008 unless the AMF decides to extend them.</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>

	<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>				
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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 will apply until December 31, 2008. However, the prohibition will 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.</p> <p>A translation of both decrees can be found at:</p> <p>http://www.bafin.de/clin_116/nn_720486/SharedDocs/Artikel/EN/Service/Meldungen/meldung_080919_leervekauf.html?_nnn=true</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</p> <p>(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>

	<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>				
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IRELAND

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Irish Financial Services Regulatory Authority (the "IFSRA") amended the Market Abuse Rules (March 2006) 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 IFSRA has not stated when the measures will terminate but will keep them under continuous review.</p>	<p>It is market abuse to enter a transaction or arrangement after September 18, 2008 which has the effect of generating a net economic benefit, including increasing any net short position, which would arise from a fall in the price of the shares in an Irish publicly quoted bank.</p> <p>An existing short position can be continued or traded to reduce or close out the short position.</p> <p>A net short position which does not arise because of a transaction/arrangement entered into after September 18, 2008 to create that short position is not prohibited (but it may be disclosable).</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>If the net short position falls below 0.25 per cent, the IFSRA must be notified of this.</p> <p>Disclosure must be made:</p> <ol style="list-style-type: none"> 1. 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); 2. 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>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 IFSRA has indicated that shorting of the ISEQ Index, although covered by the rule, 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>

			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 the issued share capital of the company and the amount of the position.		
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ITALY

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>Consob, the Italian securities markets regulator, has adopted three measures on short sales of shares.</p> <p>On September 22, 2008, Consob issued Resolution 16622, which provides for a prohibition on "naked" short sales of bank and insurance company shares; on October 1, 2008, it issued Resolution 16645, which expressly prohibits all short sales of such shares; and, subsequently, on October 10, 2008, Consob issued Resolution 16652, which provides for a prohibition of all short sales of shares of any company listed and traded on Italian-regulated markets.</p> <p>Resolution 16622 became effective at 00.01 a.m. on September 23, 2008 and will expire at 11.59 p.m. on October 31, 2008.</p> <p>Resolution 16645 became effective at 2.00 p.m. on October 1, 2008 and will expire at 11.59 p.m. on October 31, 2008. On October 29, 2008, Consob amended Resolution 16652 extending the expiration date to 11.59 p.m. of December 31, 2008.</p> <p>These measures are aimed at ensuring the proper conduct of</p>	<p>By virtue of Resolutions 16622; 16645; and 16652, all sale of shares of companies listed and traded on Italian-regulated markets must be backed by the ownership and right to dispose of such securities by the seller.</p> <p>Ownership and right to dispose of the securities must exist from the time of submission of the sale order through to the time of settlement of the relevant trade.</p> <p>Borrowed securities, irrespective of the technical form of such borrowing, are not considered as "owned" or "disposable" for the purposes of this prohibition.</p>	<p>Any share of a company listed and traded on Italian-regulated markets.</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 clearing and settlement systems are required to adopt any and all measures to prevent stock market speculations that may cause an unusual price decrease of the affected shares.</p>

trading and the integrity of the markets, due to the recent evolution of the market situation.					
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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/pre ssrelease_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/pre ssrelease_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.</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 against short selling.</p> <p>Both the term and the contents of the</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>

<p>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>
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NON-EU JURISDICTIONS

AUSTRALIA⁵

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<p>The Australian Securities and Investments Commission ("ASIC") has by Class Order prohibited covered short selling of all securities, managed investment products and stapled securities quoted on licensed markets in Australia, subject to certain exceptions. This prohibition came into effect on September 22, 2008.</p> <p>The ban is expected to be lifted for non-financial stocks on November 18, 2008. The ban on covered short selling for financial stocks is expected to be in place until January 27, 2009.</p> <p>Generally naked short selling is also prohibited subject to certain exceptions.</p>	<p>Covered and naked short selling of Australian stock exchange ("ASX") listed securities and managed investment products.</p>	<p>All listed ASX securities and managed investment products.</p> <p>Post November 18, 2008 until January 27, 2009 (subject to any further ASIC announcements) the ban will only apply to financial stocks. Financial stocks are defined as stocks of entities in the S&P/ASX 200 Financial Index (which will include property trusts and five other APRA supervised listed entities not in this index).</p>	<p>Where covered short selling is permitted, the short selling transaction needs to be disclosed. 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.</p> <p>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 will put in place disclosure and reporting arrangements that will apply from the time the ban is lifted (expected to be November 18, 2008 for non financial stocks). The details of these reporting requirements have not yet been released.</p>	<p>Exemptions 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>ASIC had modified the law to ensure that trading of exchange traded options is largely unaffected other than by certain reporting requirements.</p>

⁵ This information is up to date as of 24 October 2008.

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>

<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>finer 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>
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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 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>

<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 from the prospectus requirements in</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>
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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 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). ▪ There is no temporary ban on covered short selling. 	<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 a market maker 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 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>

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.

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 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>None regarding the new disclosure obligation.</p>	<p>None.</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. According to the CSRC, only carefully selected brokerages would be initially approved to provide these services, and no clear timetable has been set up for the trial program yet. Further notification is expected to be published by the CSRC in the near future to specify the criterion and approval procedures for qualified brokerages.

SINGAPORE

ACTION TAKEN	PROHIBITIONS / RESTRICTIONS	STOCKS AFFECTED	DISCLOSURE OBLIGATIONS	EXEMPTIONS	OTHER PROVISIONS
<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.</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 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</p>	<p>With effect from September 25, 2008, the following penalties will be imposed for failed deliveries:</p> <p>(i) <i>All failed deliveries: five per cent. of the value of a failed trade (subject to a minimum of S\$1,000); and</i></p> <p>(ii) <i>Failed deliveries in the buying-in market: an additional S\$50,000 and/or disbarment from participation in the buying-in market.</i></p> <p>The minimum sum 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>N/A</p>	<p>N/A</p>	<p>A market participant may lodge an appeal with the SGX through its broking firm 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 broking firm of the results of its appeal in writing within 10 business days from the date of the notification.</p>

<p>buying-in market.</p> <p>On October 21, 2008, the SGX issued a press release 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. The SGX will be engaging market participants shortly, in a public consultation, to establish a permanent disciplinary framework for penalizing failed deliveries. Until then, the existing measures will continue to apply.</p>					
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UNITED ARAB EMIRATES⁶

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.	N/A	None.	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.

⁶ This information is up to date as at 24 October 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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