



Client Alert

Short-Selling Rules: International Developments

23 September, 2008

The following is a brief summary of short-selling provisions which have been announced in certain jurisdictions as of 22 September, 2008.

This summary is not intended to be a comprehensive list, as new provisions are being brought in by these and other countries as this document is being prepared and should not therefore be relied upon. Moreover the summary is not intended to be fully comprehensive and in many cases the provisions referred to are subject to further clarification and/or amendment.

We will be updating this information over the coming days and weeks. If recipients require specific advice they should contact the persons named below.

Australia:

The Australian Securities & Investments Commission (ASIC) has announced that effective from 22 September, 2008 all short selling (naked and covered) is prohibited. No end date for the prohibition has been stated, although the ASIC will review the position in 30 days from 22 September.

[http://asic.gov.au/asic/pdflib.nsf/LookupByFileName/coo8-752.pdf/\\$file/coo8-752.pdf](http://asic.gov.au/asic/pdflib.nsf/LookupByFileName/coo8-752.pdf/$file/coo8-752.pdf)

ASIC has announced certain exceptions to the prohibition:

http://www.asx.com.au/about/pdf/20080923_update_on_asic_response_to_short_selling.pdf

Belgium:

The Belgian Banking, Finance and Insurance Commission (CBFA) has announced rules, which are initially in effect for three months, prohibiting naked shorting of financial stocks listed on Euronext Brussels.

The affected issuers are:

- KBC Groep NV
- Fortis NV/SA
- ING Groep NV
- Dexia SA
- KBC Ancora NV

A disclosure regime has also been announced. Disclosure to the market must be made through a press release. Notification to the CBFA may be made by any means.

The disclosure to the market may be done on a net basis. The reporting to the CBFA needs to be made on a gross basis. The aggregated net economic short position needs to be broken down into its component parts for the purpose of this notification.

The first disclosure deadline is the end of day on Thursday 25 September, 2008, based on the net economic short positions of 0.25% or above held at the end of Monday 22 September, Tuesday 23 September, Wednesday 24 September and Thursday 25 September.

A disclosure should be made at the group level and needs to be specified at group level.

http://www.cbfa.be/eng/Press/html/2008-09-19_cbfa.asp and
<http://www.cbfa.be/eng/fm/mm/faq/faq1.asp>

Canada:

The Ontario Securities Commission has issued an Order prohibiting short selling of securities of certain financial sector issuers that are listed on the Toronto Stock Exchange (TSX) and are also interlisted in the United States (with the exception of one issuer whose shares are interchangeable). The Order is in effect until 3 October, 2008, unless extended. There are certain exceptions to the prohibition.

The affected issuers are:

- Aberdeen Asia-Pacific Income Investment Company Ltd.
- 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
- Merrill Lynch & Co., Canada Ltd.

http://www.osc.gov.on.ca/Media/NewsReleases/2008/nr_20080922_osc-amend-temp-order.jsp

France:

The Autorité des Marchés Financiers (AMF) has announced a prohibition of naked short selling on all equity securities issued by credit institutions, investment companies and insurance companies listed on the French regulated markets (Euronext Paris, MATIF and MONEP). There are certain exceptions to the prohibition.

There is a T+1 reporting requirement with respect to any 0.25% net short position.

Clarification on the operation of the new regulations is forthcoming. At this point, participants must confirm with their counterparts that they are not naked short selling and that such counterparty has the securities somewhere in custody prior to execution.

The AMF has also issued a press release which reminds market participants that under current rules, anyone selling shares in France must deliver the stock within three days.

The affected issuers are:

- Allianz
- April Group
- AXA
- BNP Paribas
- CIC
- CNP Assurances
- Crédit Agricole
- Dexiz
- Euler Hermes
- HSBC Holdings
- Natixis
- NYSE Euronext
- PARIS RE
- SCOR
- Société Générale

<http://www.amf-france.org/Default.asp?lang=en#>

http://www.amf-france.org/documents/general/8424_1.pdf

http://www.amf-france.org/documents/general/8425_1.pdf

Germany:

The Federal Financial Supervisory Authority (BaFin) has announced a prohibition on all transactions which result in a naked short position or the increase in such position in the following affected issuers:

- 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

The ban will apply from 20 September, 2008 to 31 December, 2008, but will be reviewed on an ongoing basis.

There are certain exempted transactions.

http://www.bafin.de/cln_109/nn_720788/SharedDocs/Aufsichtsrecht/EN/Verfuegungen/vf_o80919_leerverk_en.html

Greece:

An outright prohibition on short selling is not being proposed. However, restrictions are being considered.

Hong Kong:

Naked short selling remains prohibited in Hong Kong. A limited number of liquid stocks are eligible for covered short selling. Martin Wheatly, the CEO of the Securities and Futures Commission (SFC), has stated that the SFC is considering relaxing the "uptick rule" in relation to short selling of Hong Kong stocks, which requires that a short sale cannot be made on the SEHK below the best asking price.

Ireland:

The Financial Regulator has introduced provisions to prohibit all short selling of stocks on Irish publicly quoted banks. No expiration date for the prohibition has been announced.

The affected issuers are:

- Bank of Ireland
- Allied Irish Bank PLC
- Irish Life and Permanent PLC
- Anglo Irish Bank Corporation PLC

There is a T+1 reporting requirement with respect to any 0.25% net short position.

http://www.financialregulator.ie/frame_main.asp?pg=%2Fnews%2Fnw%5Frecs%2Easp&nv=%2Fnews%2Fnw_nav.asp

Italy:

The Commissione Nazionale per le Società e la Borsa (CONSOB) has introduced provisions which prohibit naked short selling of shares of banks and insurance companies which are listed and traded on Italian regulated markets. The provisions remain in effect until October 31. CONSOB has not published a list of the affected issuers.

http://www.consob.it/main/aree/novita/comunicato_20080923.htm

Japan:

The Financial Services Agency (FSA) has confirmed that existing restrictions on short selling shares in all listed companies remain in place. In addition to requirements to verify and mark whether the transactions in question are short selling or not, there is an "uptick rule requirement" that short selling is prohibited, in principle, at prices no higher than the latest market price announced by the stock exchange concerned.

The FSA will continue to monitor the position.

<http://www.fsa.go.jp/en/announce/state/20080922.html>

Korea:

Naked short sales are already prohibited and will remain so. Covered short sales are permitted subject to price quotation restriction regulations. The government has stated that it is reviewing the short sale rules and may impose further restrictions.

Luxembourg:

The Commission de Surveillance du Secteur Financier (CSSF) has announced that it will follow the SEC and FSA in banning naked short selling. No further release or other information is available on the CSSF website at the time of preparing this update.

<http://www.cssf.lu/index.php?id=1&L=1>

Netherlands:

The Netherlands Authority for the Financial Markets (AFM) has announced a prohibition on the naked short selling of shares and depositary receipts. There are exceptions to the prohibition. The prohibition applies to the following affected issuers listed on Euronext Amsterdam:

- AEGON
- Binck Bank
- Fortis
- ING
- KAS BANK
- SNS Reall
- Van der Moolen
- Van Lansschot

There is a T+1 reporting requirement with respect to any 0.25% net short position.

<http://www.autoriteitfinancielemarkten.com/english.htm>

Portugal:

The Portuguese Securities Market Commission (CMVM) has approved an instruction which makes the daily reporting of information on short-selling transactions mandatory.

This obligation applies to members of Euronext Lisbon and members of the PEX Multilateral Trading Facility.

The report should be carried out on a T+1 basis by means of completing the standard table in the Excel format which the CMVM has provided.

<http://www.cmvm.pt/NR/exeres/B39F37CF-C36F-4BCC-99C8-175ECD6396E2.htm>

Spain:

Naked short selling is already prohibited in Spain. The Comisión Nacional del Mercado de Valores has issued a release reminding market members of the existing prohibition. No end date for the prohibition has been set. In addition, a T+1 reporting requirement with respect to any 0.25% net short position, or variation thereof, has been introduced.

The reporting requirement applies to the following issuers:

- Banco de Andalucía
- Banco de Castilla
- Banco de Crédito Balear
- Banco de Galicia
- Banco Guipuzcoano

- Banco Pastor
- Banco Popular Español
- Banco Sabadell
- Banco Santander
- Banco de Valencia
- Banco de Vasconia
- Banco Español de Crédito
- Bankinter
- BBVA
- Caja de Ahorros del Mediterraneo
- Grupo Catalana Occidente
- Mapfre
- Inverfiatc
- Bolsas y Mercados Españoles
- Renta 4

<http://www.cnmv.es/index.htm>

Switzerland:

Naked or uncovered selling is already prohibited in Switzerland. The Swiss Federal Bank Commission (SFBC) has issued a release reminding market participants of the prohibition. The SFBC release states that banks must make sure that when selling securities for clients they are able to deliver the securities on settlement date.

<http://www.ebk.admin.ch/e/aktuell/index.html>

http://www.swx.com/swx_messages/online/swx_message_200809191118_en.pdf

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