



LEGAL ALERT

## New Financial Services Authority Short Selling Rules

Late in the afternoon of Thursday 18 September 2008, the Financial Services Authority (FSA) in London announced the introduction of new provisions (a) prohibiting the future short selling of shares in UK banks and insurance companies, and (b) requiring daily disclosure of existing short positions of 0.25% or above in such companies. These provisions are contained in the FSA's Short Selling (No 2) Instrument 2008 (the "Instrument"). The FSA has also made available on its website (<http://www.fsa.gov.uk/Pages/index.shtml>) some likely FAQs about the new provisions, its list of UK financial sector companies covered by the prohibition, and a new disclosure form (TR-4).

This alert briefly summarises the new provisions.

### **Ban on short selling of financial stocks**

As from 00.01 (one minute past midnight London time) on Friday, 19 September 2008, a person:

- *cannot create* a net short position in a UK financial sector company;
- *cannot increase* any net short position in a UK financial sector company that the person had before 19 September 2008.

A UK financial sector company is defined in the Instrument as a UK bank or insurer or a UK incorporated parent undertaking of such bank or insurer. The FSA has issued a list (obtainable from its website) of 29 companies which fall within this definition. The FSA stresses that this list has been produced on a "best endeavours basis".

The ban applies to all types of short selling instruments. It does not apply to market makers.

A failure to comply with the ban will, in the opinion of the FSA, be market abuse.

The ban does not apply to persons who hold existing positions, if the position moves and their net position subsequently goes short. As the wording above indicates, the ban only applies to people who actively enter into transactions after 18 September 2008 that have the effect of creating a net short position.

The ban (and the disclosure requirement below) is stated to be a temporary measure (because of the extreme market conditions) and will cease to have effect on 16 January 2009. There will also be a review of these provisions after 30 days.

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## **Disclosure**

As from Tuesday 23 September 2008, all net short positions of or in excess of 0.25% of the ordinary share capital of UK financial sector companies must be disclosed to the market on a daily basis.

Only the aggregate net short position of 0.25% or above in a company will need to be disclosed.

Disclosure must be made to the market through a Regulatory Information Service and must be made by no later than 3.30pm London time on the business day following each day on which the disclosable position is held.

The first disclosure must be made by 3.30pm London time on Tuesday 23 September 2008 and should relate to positions held at the end of Friday 19 September and, if different, at the end of Monday, 22 September 2008.

If a previously disclosed short position falls below 0.25%, a final disclosure of this fact is also required.

A form (Form TR-4) for making the disclosure has been published by the FSA and is available on its website.

It should be noted that this new disclosure requirement does not change in any way the earlier FSA requirement (of 12 June 2008) to disclose any short position of 0.25% or more in the shares of a UK company in the midst of a rights issue.

If you have any questions as to the scope or interpretation of the new rules and what they may mean for you, or need assistance with disclosure, please contact your Brown Rudnick attorney or one of the following attorneys:

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