



## Banking & Finance - 6/10/2008

### EU Member States act on short selling - overview

In addition to the measures announced by the CBFA, regulators in EEA, Member States have issued measures relating to the short selling of certain listed securities. In the majority of cases, these measures have been introduced in addition to the member states' implementation of the Market Abuse Directive.

Below is an overview of the various measures taken by EEA regulators as at midnight on Thursday, 25 September 2008. Reference to 'measures' in this overview are to the bans or enhanced disclosure obligations imposed on market participants specifically as a result of the recent developments in the international financial markets.

As is to be expected, many of the regulators have provided general commentary on the impact the turbulence in the international financial markets has had on their domestic regulated markets and/or have confirmed increased surveillance of financial services companies. We have not captured general commentary/statements on short selling in this overview but have provided the relevant website addresses for information.

Additional information is also available on the Committee of European Securities Regulators ("CESR")'s website : [http://www.cesr.eu/data/document/08\\_742.pdf](http://www.cesr.eu/data/document/08_742.pdf).

These measures will be closely monitored by the respective EEA regulators and are likely to be reviewed and re-stated over the next few weeks.

We have consulted with our colleagues within the CMS network and other firms that we work closely with to provide an accurate statement of the current position in the following jurisdictions.

Note: D+1 refers to the day after the trading day (i.e. T+1 or J+1).

#### **Austria (Financial market Authority - FMA)**

Holding a net short position represented by an economic interest (shares, derivatives) of 0,25% or more of the issued capital in an issuer will be regarded as "a significant indicator of market abuse". FMA has also announced a programme of heightened supervision with a view to identify such instances. As a consequence, holding net short position of 0,25% may constitute market abuse and notice of such a holding should be made to FMA.

Website: <http://www.fma.gv.at/cms/site/EN/index.html>

#### **Belgium (Commission bancaire, financière et des assurances - CBFA)**

A person is required to disclose to the CBFA and Euronext Brussels any net short positions that represent an economic interest (shares, derivatives) in excess of 0,25% of the issued share capital in the following financial institutions listed on Euronext Brussels by D+1 : Dexia SA, Fortis NV/SA, KBC Groep NV, KBC Ancora SCA and ING Groep NV.

A fund manager must adhere to these provisions in relation to all the funds it manages on a discretionary

basis. In addition, the CBFA has i) asked financial institutions not to lend securities of the listed financial companies, except to cover transactions entered into before the 22 September 2008 ; and ii) to ensure that any sales orders that may lead to delayed settlement and delivery of securities in the listed financial companies are 100% covered. An exemption applies to : market makers, liquidity providers and counterparties of block transactions. Breach of the measures may amount to market abuse. These measures take effect from 22 September 2008 for a period of three months.

Website: <http://www.cbfa.be/eng/fm/mm/faq/faq1.asp>

### **Bulgaria (Financial Supervision Commission - FSC)**

No measures announced.

Website: <http://www.fsc.bg/>

### **Cyprus (Cyprus Securities and Exchanges Commission - CSEC)**

Although not expressly prohibited by the applicable laws, existing rules may be construed as an indirect restriction on short selling . The CSE has not officially confirmed this position and has not currently announced any measures.

Website : [http://www.cysec.gov.cy/default\\_en.aspx](http://www.cysec.gov.cy/default_en.aspx)

### **Czech Republic (Czech National Bank - CNB)**

No measures announced.

Website : <http://www.cnb.cz/en/index.html>

### **Denmark (Finanstilsynet)**

No measures announced.

Website : <http://www.dfsa.dk/sw99.asp>

### **Estonia (Finantsinspektsioon)**

No measures announced.

Website : <http://www.fi.ee/index.php?lang=en>

### **Finland (Rahoitustarkastus Finansinspektionen - FIN-FSA)**

No measures announced.

Website : <http://www.fin-fsa.fi/eng>

### **France (Autorité des Marchés Financiers - AMF)**

Existing AMF rules prohibit naked short sales.

Any person holding a short position that represents an economic interest (shares, derivatives) of 0,25% or more of the issued share capital of one of the relevant companies must disclose this to the AMF (Market Surveillance Unit) and the market by D+1 . The relevant companies are credit institutions and insurance companies traded on French regulated markets (Euronext Paris, MATIF and MONEP). AMF is yet to confirm whether the disclosure threshold applies on a net or gross basis - the rules refer to a "net economic benefit", which suggests it the rule will apply on a net basis in France until further notice. An exemption applies to : market makers, liquidity providers and counterparties for block trades in equities. Breach of these measures is likely to amount to market abuse. The measures came into force on 22 September 2008 for a period of three months.

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

### **Germany (Bundesbank and German Financial Supervisory Authority - BaFin)**

Creating or increasing naked short positions is prohibited in the shares (not derivative positions) of the

following 11 listed financial sector companies : Aareal Bank AG, Allianz SE, AMB Generali Holding AG, Commerzbank AG, Deutsche Bank AG, Deutsche Borse AG, Deutsche Postbank AG, Hannover Rdekversicherung AG, Hypo Real Estate Holding AG, MLP AG, Munchener Ruckversicherungs-Gesellschaft AG. No disclosure obligations have been announced. An exemption applies to : market makers and certain transactions by bookrunning brokers. Short sales used to secure an existing position are also exempt. A person may also apply in writing to BaFin to request additional exemptions. The ban is in place from 20 September 2008 until 31 December 2008.

Website: [http://www.bafin.de/EN/Home/homepage\\_node.html?\\_nnn=true](http://www.bafin.de/EN/Home/homepage_node.html?_nnn=true)

### **Greece (Hellenic Capital Market Commission - HCMC)**

There is no prohibition on short sales. A person holding a short position that amounts to 0.10% of the total number of shares in a company listed on the Athens Exchange is obliged to disclose this position to the HCMC on same day. Changes to the position should also be notified to the HCMC. Disclosure is published in the Daily Official List Announcements of the Athens Exchange on D+1. These measures take effect from 24 September 2008 until the 31 December 2008.

Website: <http://www.hcmc.gr./pages/index.asp>

### **Hungary (Hungarian Financial Supervisory Authority - HFSA)**

No measures announced.

Website: <http://english.pszaf.hu/engine.aspx>

### **Iceland (The Financial Supervisory Authority - FME)**

No measures announced.

Website: <http://www.fme.is/?PageED=146>

### **Ireland (Irish Financial Services Regulatory Authority - IFSRA)**

Creating or increasing short positions is prohibited in the following listed financial companies: The Government and Company of the Bank of Ireland, Allied Irish Banks Plc, Irish Life and Permanent Plc and Anglo Irish Bank Corporation Plc. The prohibition does not apply to the taking of a short position that offsets or partially offsets a long position in relation to the same company. Holders of an economic interest of 0,25% or more in the issued share capital of any of the four companies are also required to disclose that interest by 15:30 hours on the business day on which the position is taken and on each business day thereafter while the 0,25% or greater position remains. The disclosure obligation applies to aggregate net short positions. The prohibition and the disclosure obligation apply all short positions, no matter how created (spread bets, CFDs, etc) and whether the position is direct or indirect. They also apply to the taking of a short position on an intra-day basis, even if closed out on the same day. An exemption applies to : market makers. In the case of a fund manager that holds short positions on behalf of a discretionary client, the prohibition and the disclosure obligation each seem to apply to the fund manager (and not also to the discretionary client). These measures are effective from 18 September 2008 (ban) and 23 September 2008 (disclosure) respectively, until further notice by the regulator. A breach of the prohibition or the disclosure obligation may be market abuse.

Website: <http://www.financialregulator.ie/>

### **Italy (Commissione Nazionale per le Society e le Borse - CONSOB)**

Existing CONSOB rules restrict naked short sales. CONSOB has resolved that the sale of shares issued by banks and insurance companies listed and traded in the Italian regulated markets is allowed provided that the shares are available to the instructing party at the time of the order and until the date of the settlement of the transaction. An exemption applies to market makers, liquidity providers and the "specialist operators", which are appointed by issuers for, inter alia, supporting the liquidity of the STAR segment (the MTA market segment dedicated to midsize companies). The CONSOB resolution additionally entrusts the company managing the clearing and settlement services to take any measure for preventing any manoeuvring which may cause an irregular reduction of the price of shares issued by banks and insurance companies. The

provisions take effect from 00.00hr on 23 September 2008 to 00.00hr on 31 October 2008.

Website: <http://www.consob.it/mainen/index.html>

### **Latvia (Financial & Capital Market Commission - FKTK)**

No measures announced.

Website: <http://www.fktk.lv/>

### **Lithuania (Lithuanian Securities Commission -VPK)**

No measures announced.

Website: <http://www.vpk.lt/en/>

### **Luxembourg (Commission de Surveillance du Secteur Financier -CSSF)**

Ban on naked short sales in stocks of a credit institution or insurance undertaking, whether as principal or on behalf of clients. 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. No disclosure obligations have been announced.

A breach of this rule may amount to market abuse. The ban came into force on 19 September 2008, and will continue until further notice from the regulator.

Website: [http://www.cssf.lu/uploads/Media/pressrelease\\_short\\_selling\\_190908.pdf](http://www.cssf.lu/uploads/Media/pressrelease_short_selling_190908.pdf)

### **Malta (Malta Financial Services Authority -MFSA)**

No measures announced.

Website: <http://www.mfsa.com.mt/>

### **Norway (Kredittilsynet)**

Existing Kredittilsynet rules prohibit naked short selling by investment firms. No additional measures have been announced.

Website: <http://www.kredittilsynet.no/wbch3.exe?p=2068>

### **Poland (Financial Supervisory Authority - KNF)**

No measures announced.

Website:

[http://www.gpw.pl/gpw.asp?cel=e\\_inwestorzy&k=6&i=/e\\_papiery/short\\_selling/short&sky=1](http://www.gpw.pl/gpw.asp?cel=e_inwestorzy&k=6&i=/e_papiery/short_selling/short&sky=1)

### **Portugal (Comissao do Mercado de Valores Mobiliarios - CMVM)**

Ban on the short selling of shares and other instruments that give the right to the "acquisition, subscription or conversion" of those shares in the following listed financial companies : Banco Comercial Portugues, Banco BPI, Banco Espirito Santo, Banco Popular, Banco Santander Central Hispano, Banif SGPS, Finibanco Holding SGPS and Espirito Santo Financial Group. The CMVM has also introduced a requirement to disclose short positions in any securities admitted to Euronext and PEX by 12 (noon) D+1. An exemption applies to : market makers and liquidity providers. These measures are in force from 22 September 2008 and will continue until further notice from the regulator. The CMVM has issued an opinion (non-binding) on the application of the new rules:

<http://www.cmvm.pt/NR/exeres/CAD8EB9A-D343-4052-B4B4-843B0554E9F9.htm>

Website: <http://www.cmvm.pt/en>

### **Romania (National Securities Commission - CNVM)**

No measures announced.

Website: <http://www.cnvmr.ro/en/index.htm>

### **Slovak Republic (National Bank of Slovakia)**

No measures announced.

Website: <http://www.nbs.sk/INDEXA.HTM>

### **Slovenia (Securities Markets Agency)**

No measures announced.

Website: <http://www.a-tvp.si/eng/default.asp>

### **Spain (Comision Nacional del Mercado de Valores - CNMV)**

Existing CNMV rules prohibit naked short sales. A person is required to disclose net short positions that represent an economic interest (shares, cuotas and derivatives) exceeding 0,25% of the issued share capital before 19 :00hr D+1 in the following financial institutions : Banco de Andalucia, Banco de Castilla, Banco de Credito Balear, Banco de Galicia, Banco Guipuzcoano, Banco Pastor, Banco Popular Espanol, Banco Sabadell, Banco Santander, Banco de Valencia, Banco de Vasconia, Banco Espanol de Credito, Bankinter, BBVA, Caja de Ahorros del Mediterraneo, Grupo Catalans Occidente, Mapfre, Inverfiatc, Bolsas y Mercados Espafoles and Renta 4. Increases or decreases of the short position must also be disclosed. An exemption applies to : market makers, liquidity providers and counterparties of block transactions. Failure to disclose will be regarded by the CNMV as an indication of market abuse. The disclosure measure is in place from 24 September 2008 until the CNMV decides that the market conditions have improved.

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

### **Sweden (Finansinspektionen - FI)**

FI has announced heightened supervision with a view to identify instances of market abuse. Using short selling to influence unlawfully the price of a security is already prohibited and amounts to market abuse. No specific measures limiting short selling have been announced, as the FI believes this would probably require legislative (rather than regulatory) changes.

Website: [http://www.fi.se/Default\\_3.aspx](http://www.fi.se/Default_3.aspx)

### **The Netherlands (Autoriteit Financiële Markten - AFM)**

Ban on the naked short selling of shares issued by the following financial companies listed on the Euronext Amsterdam Stock Exchange : Aegon, Binck Bank, Fortis, ING Groep, Kas Bank, SNS Reaal, Van Der Moolen and Van Lanschot. A person is also required to disclose any net economic short positions exceeding 0,25% of the issued share capital of one of the listed financial companies by D+1. A fund manager must adhere to these provisions in relation to all the funds it manages on a discretionary basis. The AFM has also asked that parties refrain from lending the relevant securities for the term of the ban. An exemption applies to : market makers and counter party in block trade transactions. Breach of these rules will result in legal action by the AFM. The rules came into effect on 22 September 2008 and will apply until 21 December 2008.

Website: <http://www.afm.nl/corporate/default.ashx?DocumentID=11492>

### **UK (Financial Services Authority - FSA)**

Purported prohibition on actively creating or increasing a short position in 34 financial companies listed on the FSA website. (Please note that the FSA list has been expanded since our LawNow of 19 September to include the following additional financial companies : Aberdeen Asset Management Plc, Close Brothers Group Plc, F&C Asset Management Plc, Investec Plc, Rathbone Brothers Plc and Schroders Plc. Please also note that Resolution Plc is no longer on the FSA list of financial companies).

FSA has issued guidance explaining that it is still possible to short a UK financial sector company provided the short position can be offset with an equivalent long position in relation to the same company. In

In addition, a person is required to disclose net short positions represented by an "economic exposure" (shares, derivatives) of 0,25% or more of the issued share capital of any one of the 34 financial companies. An exemption applies to : market makers (which is defined to include liquidity providers). (Registration with an exchange or trading platform is not relevant for the purposes of the definition of market maker in this context). A fund manager must adhere to these provisions in relation to all the funds it manages on a discretionary basis. Contravention of these measures may amount to market abuse, although it should be noted that these are "evidential provisions" (i .e. breach of them means that the FSA considers this evidence of market abuse). The measures are in place from 19 September 2008 until 16 January 2009. Website: [http://www.fsa.gov.uk/pubs/other/short\\_selling\\_faqs.pdf](http://www.fsa.gov.uk/pubs/other/short_selling_faqs.pdf)

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