

SHORT SELLING (NO 5) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 119 (The code);
 - (2) section 121 (Codes: procedure);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 16 January 2009 and applies in relation to any position held on or after that date.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Market Conduct sourcebook (MAR) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Short Selling (No 5) Instrument 2009.

By order of the Board
14 January 2009

Annex A

Amendments to the Glossary of definitions

In this Annex, striking through indicates deleted text.

net short position

~~a net short position which gives rise to an economic exposure to the issued share capital of a company.~~

~~Any calculation of whether a person has a short position must take account of any form of economic interest in the shares of the company.~~

Annex B

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.9 Market abuse (misleading behaviour) & market abuse (distortion)

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Short selling in relation to financial sector companies

- 1.9.2C E (1) ~~A person who enters into a transaction that (whether by itself or in conjunction with other transactions) has the effect of:~~
- ~~(a) creating a *net short position* in a *UK financial sector company*; or~~
 - ~~(b) increasing any *net short position* in a *UK financial sector company* that the person had immediately before 19 September 2008;~~
- ~~is, in the opinion of the FSA, engaging in *behaviour* that is *market abuse (misleading behaviour)*. [deleted]~~
- (2) ~~Paragraph (1) does not apply to a person acting in the capacity of a market maker. [deleted]~~
- (3) ~~Paragraph (1) does not apply to a transaction entered into or an order placed before 19 September 2008. [deleted]~~
- (4) ~~This provision ceases to have effect on 16 January 2008. [deleted]~~

~~Disclosure of pre-existing positions~~

- 1.9.2D E (1) Failure by a person who has a *disclosable short position* in a *UK financial sector company* to provide adequate ongoing disclosure of their position is *behaviour* which, in the opinion of the FSA, is *market abuse (misleading behaviour)*.
- (2) In paragraph (1), “adequate ongoing disclosure” means disclosure made on a *RIS* by no later than 3.30pm on the *business day* following:
- ~~(a) the first day on which the position reaches, exceeds or falls below a *disclosable short position* is held after 30 October 2008; and of 0.25%, 0.35%, 0.45% and 0.55% of the issued share capital of the company and each 0.1%~~

threshold thereafter.

~~(b) each day on which the *disclosable short position* changes.~~

~~(2A) The disclosure referred to in (1) must include the name of the person who has the position, the amount of the *disclosable short position* and the name of the company in relation to which it has that position. Where the change in position results in the person no longer holding a *disclosable short position*, there must be disclosure to that effect.~~

~~(3) The first disclosure required under this provision is by 3.30pm on 23 September 2008 which should relate to positions held on 19 September and 22 September. For the avoidance of doubt, changes in a *disclosable short position* between the thresholds referred to in (2) do not need to be disclosed under this section. For example, an increase from 0.25% to 0.31% of the issued share capital of the company does not need to be disclosed.~~

~~(4) This provision ceases to have effect on 16 January 2009. For the avoidance of doubt, (1) applies during a *rights issue period*.~~

~~(5) This provision ceases to have effect on 30 June 2009.~~

1.9.2E G ~~MAR 1.9.2DE refers to a person providing adequate ongoing disclosure of *disclosable short positions*. A person may have such an interest despite MAR 1.9.2CE because they had a *disclosable short position* before 19 September 2008 or because they had a short position before that date which due to other extraneous factors becomes a *disclosable short position*. [deleted]~~