Katten

KattenMuchinRosenmanCornish LLP

Client Alert

FSA Issues Short Position Rules

19 September 2008

The UK Financial Services Authority (FSA) has now published the new provisions of its Code of Market Conduct, which prohibit the active creation or increase of net short positions in UK financial sector companies ("relevant companies") with effect from 12.01am today (September 19) and also require ongoing daily disclosure of net short positions of 0.25% in relevant companies held after the close of today.

Relevant companies for the purpose of the prohibition and disclosure requirements are "UK financial sector companies", defined as UK banks, UK insurers and UK incorporated parent undertakings of a UK bank or UK insurer. A UK bank is any bank which is a body corporate or partnership formed under the laws of any part of the UK, and a UK insurer is broadly any insurer whose head office is in the UK. The prohibition applies to the creation of ANY net short position in a relevant company. The FSA has published a list of certain companies to which the prohibition applies at:

www.fsa.gov.uk/pubs/handbook/list_instrument200850.pdf

The FSA has stated that its list has been prepared on a "best efforts" basis. So it is possible that there are other UK banks or insurance companies falling within the definition of relevant companies which do not appear on the FSA's list.

A prohibited short position is any net short position which gives rise to an economic exposure to the issued share capital of a relevant company. "Economic interest" includes any instrument which gives the holder an exposure, whether direct or indirect, to the issued shares of a relevant company, including OTC transactions. Any calculation of whether a person has a short position must take account of any form of economic interest in the shares of the relevant company. Net short positions cannot be created or increased intra-day. The only exemptions are for market makers acting in their capacity as such.

The UK's market abuse regime covers not just the shares themselves, but also related investments, i.e., any instruments whose price or value depends on the price or value of the share. This includes, for example, CFDs, spread bets, options, futures and depository receipts.

All net short positions of 0.25% or more which give rise to an economic exposure to the issued share capital of a relevant company must be disclosed to a Regulatory Information Service (RIS) by 3.30pm on the business day following each business day on which a disclosable short position is held. The first disclosure deadline is 3.30pm London time on Tuesday, September 23 for any disclosable short positions held at the close of Friday, September 19 and for disclosable short positions held at the close of Monday, September 22 (if such positions have changed since Friday).
For fund managers, disclosure must be made on an aggregated basis as well as for any underlying funds or managed accounts that individually hold a net short position of 0.25% or more.

Non-compliance with the new requirements will constitute market abuse under the FSA's Code of Market Conduct, which applies to all market participants, not just to FSA regulated firms.

Initially, the rules are in effect until January 16, 2009. The FSA has promised that a comprehensive review of its rules on short selling will be published in January 2009.

www.fsa.gov.uk/pubs/handbook/instrument2_2008_50.pdf

www.fsa.gov.uk/pubs/other/short_selling_faqs.pdf

For further information, please contact:

	Direct Dial	Email
Edward Black	+44 (0) 20 7776 7624	edward.black@kattenlaw.co.uk
Martin Cornish	+44 (0) 20 7776 7622	martin.cornish@kattenlaw.co.uk
Sean Donovan-Smith	+44 (0) 20 7776 7625	sean.donovan-smith@kattenlaw.co.uk

Katten

Katten Muchin Rosenman Cornish LLP

www.kattenlaw.co.uk

1-3 Frederick's Place • Old Jewry • London EC2R 8AE
+44 (0) 20 7776 7620 tel • +44 (0) 20 7776 7621 fax