



New short selling disclosure requirements

Introduction

This note provides guidance on revised FSA rules regarding disclosure of short selling. The rules were introduced with effect from 6 August 2010 by the implementation of the new FINMAR sourcebook.

FINMAR 2.2 replaced previous rules on short selling disclosure at MAR 1.9.2 This related to the fact that non-disclosure of a short selling position (as defined by the FSA rules) during a rights issue could be construed as behaviour which could constitute Market Abuse (Misleading Behaviour).

Revised Rules

The new rules are broadly similar but with a narrower range regarding the relevant markets. The rules are as follows:

A person who has a disclosable short position must provide disclosure of his position where:

- (1) the position relates, directly or indirectly, to securities which are:
 - (a) the subject of a rights issue;
 - (b) admitted to trading on a prescribed market in the UK; and
 - (c) issued by a UK company or a non-UK company for whom the prescribed market is the sole or main venue for trading the securities; and
- (2) the disclosable short position
 - (a) is reached or exceeded or the position falls below a disclosable short position during a rights issue period; or
 - (b) has been reached or exceeded immediately before the beginning of the rights issue period and has not fallen below a disclosable short position at the time the rights issue period commences.

A firm which has a disclosable short position in a UK financial sector company must provide ongoing disclosure.

Responsibility for disclosure technically rests with the 'person' which holds the position, although in the case of discretionary managers, it is normally the investment managers who will be carrying out the disclosure.

A link to the rules is attached below.

<http://fsahandbook.info/FSA/html/handbook/FINMAR/2/2>



Definition of disclosable short position

This is defined as a 'net short position' which represents an economic interest of one quarter of 1% or more of the issued capital of a company.

Where a discretionary investment manager manages investments for more than one client, the firm must provide disclosure in respect of the aggregate net short position of all the portfolios managed.

A link to the definition is shown here.

<http://fsahandbook.info/FSA/glossary-html/handbook/Glossary/D?definition=G2581>

Calculation of a net short position

The calculation of a net short position should include any synthetic short position, for example using a Contract for Difference or other instrument to achieve the effect of shorting.

Guidance on the calculation of a net short position can be found by following the link below.

<http://fsahandbook.info/FSA/html/handbook/FINMAR/2/3>

How do I disclose this?

Disclosure:

- is made on a Regulated Information Service by no later than 3.30pm on the business day following the day on which the position reaches, exceeds or falls below a disclosable short position of 0.25% of the issued capital of a company; and
- includes the name of the 'person' who has the disclosable short position, the amount of the position and the name of the company in relation to which the 'person' has the position.