

## INVESTMENT FUNDS ALERT

### FSA ANNOUNCES NEW SHORT SELLING DISCLOSURE REGIME FOR RIGHTS ISSUES



#### SUMMARY

The United Kingdom Financial Services Authority (FSA) has announced a new temporary regime, effective from June 20, 2008, for the disclosure of significant short positions in securities trading on a UK-recognised investment exchange (including the London Stock Exchange's Main Market, Alternative Investment Market, OFEX/PLUS and the Specialist Fund Market) and which are subject to a rights issue.

#### CONTEXT

As a result of suspicions that recent sharp falls in the share price of certain banks that have been conducting rights issues were the result of targeted short selling, leading investment banks had been lobbying the FSA to take action to shore up the market for rights issues. The FSA perceives aggressive short selling as market manipulation and as having the potential for destabilising the markets.

#### ANNOUNCED AMENDMENT

Effective on Friday, June 20, 2008, the Code of Market Conduct, which provides assistance in determining whether or not behaviour amounts to market abuse, will be amended to include new provisions requiring the disclosure of a significant short position in securities trading on a relevant market where that position relates, directly or indirectly, to securities that are the subject of a rights issue.

A significant short position is defined as one which represents an economic interest of 0.25 percent or more of the issued share capital of an issuer, achieved via short selling or by any instruments giving rise to an equivalent economic interest.

The disclosure will be required if the disclosable short position is reached or exceeded between the date of the applicable issuer's announcement that it is undertaking a rights issue and the date that the shares issued under the rights issue are admitted to trading on a prescribed market. Such disclosure must be made by means of a Regulatory Information Service by 3:30 p.m. London time the following business day.

Failure to give adequate disclosure is behaviour that, in the opinion of the FSA, is misleading behaviour constituting market abuse.

The FSA may adjust the requirements, including the reporting threshold, depending on its experience with the disclosure regime after it takes effect. The FSA is also considering adopting further measures in this area, including restricting the lending of securities in rights issues for the purposes of enabling short selling.

For information regarding the FSA's changes to the Code of Market Conduct, please see the below link:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/057.shtml>

We will continue to monitor the FSA stance on this issue and will issue such client alerts as are necessary in order to update our clients and contacts on a timely basis. The FSA and the U.K. Treasury are planning a wide-ranging review of the rights issue process. Alistair Darling, the chancellor, has announced that the new rules are a temporary measure and that a lasting solution will be sought.

## CONTACT INFORMATION

If you have any questions regarding this alert, please contact:

Sebastian Rice	.....	srice@akingump.com	.....	44.20.7012.9618	.....	London
Simon W. Thomas	.....	swthomas@akingump.com	.....	44.20.7012.9627	.....	London
Austin	Beijing	Dallas	Houston	London	Los Angeles	Moscow
New York	Philadelphia	San Antonio	San Francisco	Silicon Valley	Taipei	Washington, D.C.