



# Financial Services Act 2010

## 2010 CHAPTER 28

### *Short selling*

#### **8 Power of FSA to prohibit, or require disclosure of, short selling**

In the Financial Services and Markets Act 2000, after Part 8 insert—

#### **“PART 8A**

#### SHORT SELLING

#### *Short selling rules*

#### **131B Short selling rules**

- (1) The Authority may make rules prohibiting in specified cases persons from engaging in short selling in relation to relevant financial instruments (or relevant financial instruments of a specified description).
- (2) The Authority may make rules requiring—
  - (a) a person who has engaged in short selling in relation to relevant financial instruments (or relevant financial instruments of a specified description), or
  - (b) an authorised person of a specified description who has acted on behalf of such a person,to disclose in specified cases specified information, or information of a specified description, about the short selling.
- (3) Rules under subsection (2) may specify the time by which, and the way in which, the disclosure must be made (and may in particular provide for the information to be disclosed to the Authority or published in a specified way).

- (4) Rules under subsection (2) may apply in relation to short selling engaged in before the rules are made where the resulting short position is still open when the rules are made.
- (5) The reference to a short position being open is to be read in accordance with provision made by the rules.
- (6) Rules under this section may apply to short selling wholly outside the United Kingdom by persons outside the United Kingdom, but only in so far as the rules relate to UK financial instruments.
- (7) The description of relevant financial instruments that may be specified by the rules includes relevant financial instruments issued by a specified person.
- (8) Rules under this section are referred to in this Part as “short selling rules”.
- (9) The Authority must, when making short selling rules, have regard to any international agreement as to measures to be taken in respect of short selling.

### **131C Short selling rules: definitions etc**

- (1) This section supplements section 131B.
- (2) The cases in which a person (“S”) engages in short selling in relation to a financial instrument (a “shorted instrument”) include any case where—
  - (a) S enters into a transaction which creates, or relates to, another financial instrument; and
  - (b) the effect (or one of the effects) of the transaction is to confer a financial advantage on S in the event of a decrease in the price or value of the shorted instrument.
- (3) “Financial instrument” has the meaning given by Article 4.1(17) of the markets in financial instruments directive.
- (4) “Relevant financial instrument” means a financial instrument that—
  - (a) is admitted to trading on a regulated market or on any other prescribed market in an EEA State; or
  - (b) has such other connection with a market in an EEA State as may be specified.
- (5) “Specified” means specified by short selling rules.
- (6) “UK financial instrument” means a financial instrument that is admitted to trading on a market in the United Kingdom.
- (7) In the case of a financial instrument that is admitted to trading on—
  - (a) a market in the United Kingdom or another EEA State, and
  - (b) one or more markets in a country or territory, or countries or territories, anywhere else in the world,short selling rules may apply in relation to trading on both or all markets.
- (8) In any case where—
  - (a) a financial instrument (“instrument A”) is admitted to trading on a market in the United Kingdom or another EEA State,

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- (b) another financial instrument (“instrument B”) is admitted to trading on one or more markets in a country or territory, or countries or territories, anywhere else in the world, and
- (c) the price or value of instrument A depends on the price or value of instrument B (or vice versa),

short selling rules may apply in relation to trading on both or all markets.

- (9) In subsection (4)(a) “regulated market” has the meaning given by Article 4.1(14) of the markets in financial instruments directive.
- (10) References in this section to a market in a country or territory are to a market situated or operating in the country or territory.

### **131D Short selling rules: procedure in urgent cases**

- (1) The Authority may make short selling rules (and may subsequently amend those rules) without complying with section 155 (consultation in relation to proposed rules) if it considers that it is necessary to do so, in order to—
  - (a) maintain confidence in the UK financial system; or
  - (b) protect the stability of the UK financial system.
- (2) Any rules made by virtue of subsection (1) (“emergency rules”) cease to have effect at the end of the period of three months beginning with the day on which the rules are made (“the relevant day”); but this is subject as follows.
- (3) The Authority may direct that emergency rules are to cease to have effect at the end of a period (not exceeding six months beginning with the relevant day) specified in the direction.
- (4) A direction under subsection (3) may be made only if, immediately before the end of the period mentioned in subsection (2), the Authority considers that it is necessary to do so, in order to—
  - (a) maintain confidence in the UK financial system; or
  - (b) protect the stability of the UK financial system.
- (5) Such a direction must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (6) Nothing in subsection (2) or (3) prevents the Authority from revoking emergency rules before the end of the periods referred to there.

### *Power to require information*

#### **131E Power to require information**

- (1) The Authority may, by notice in writing, require a person (“P”)—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.

- (2) This section applies only to information and documents that the Authority reasonably requires for the purpose of determining whether P, or a person connected with P, has contravened any provision of short selling rules.
- (3) Information or documents required under this section must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (4) The Authority may require any information provided under this section to be provided in such form as it may reasonably require.
- (5) The Authority may require—
  - (a) any information provided, whether in a document or otherwise, to be verified in such manner as it may reasonably require; or
  - (b) any document produced to be authenticated in such manner as it may reasonably require.
- (6) In this section “specified” means specified in the notice.
- (7) For the purposes of this section a person is connected with another person (“P”) if the person is or has at any relevant time been—
  - (a) a member of P’s group;
  - (b) a controller of P;
  - (c) any other member of a partnership of which P is a member; or
  - (d) in relation to P, a person mentioned in Part 1 of Schedule 15 (reading references in that Part to the authorised person as references to P).

### **131F Power to require information: supplementary**

- (1) If the Authority has power under section 131E to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised in relation to the third person.
- (2) If a document is produced in response to a requirement imposed under section 131E, the Authority may—
  - (a) take copies of or extracts from the document; or
  - (b) require the person producing the document, or any relevant person, to provide an explanation of the document.
- (3) In subsection (2)(b) “relevant person”, in relation to a person who is required to produce a document, means a person who—
  - (a) has been or is or is proposed to be a director or controller of that person;
  - (b) has been or is an auditor of that person;
  - (c) has been or is an actuary, accountant or lawyer appointed or instructed by that person; or
  - (d) has been or is an employee of that person.
- (4) If a person who is required under section 131E to produce a document fails to do so, the Authority may require the person to state, to the best of the person’s knowledge and belief, where the document is.

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- (5) A lawyer may be required under section 131E to provide the name and address of the lawyer's client.
- (6) A person ("P") may not be required under section 131E to disclose information or produce a document in respect of which P owes an obligation of confidence by virtue of carrying on the business of banking unless—
  - (a) P is the person under investigation or a member of that person's group;
  - (b) the person to whom the obligation of confidence is owed is the person under investigation or a member of that person's group; or
  - (c) the person to whom the obligation of confidence is owed consents to the disclosure or production.
- (7) If a person claims a lien on a document, its production under section 131E does not affect the lien.

#### *Breach of short selling rules etc*

#### **131G Power to impose penalty or issue censure**

- (1) This section applies if the Authority is satisfied that a person has contravened—
  - (a) any provision of short selling rules; or
  - (b) any requirement imposed on the person under section 131E or 131F.
- (2) The Authority may impose a penalty of such amount as it considers appropriate on—
  - (a) the person who contravened the provision or requirement; or
  - (b) any person who was knowingly concerned in the contravention.
- (3) It may, instead of imposing a penalty on a person, publish a statement censuring the person.
- (4) The Authority may not take action against a person under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person under section 131H.
- (5) "The limitation period" means the period of three years beginning with the first day on which the Authority knew of the contravention.
- (6) For this purpose the Authority is to be treated as knowing of a contravention if it has information from which the contravention can reasonably be inferred.

#### **131H Procedure and right to refer to Tribunal**

- (1) If the Authority proposes to take action against a person under section 131G, it must give the person a warning notice.
- (2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.
- (3) A warning notice about a proposal to publish a statement must set out the terms of the statement.

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- (4) If the Authority decides to take action against a person under section 131G, it must give the person a decision notice.
- (5) A decision notice about the imposition of a penalty must state the amount of the penalty.
- (6) A decision notice about the publication of a statement must set out the terms of the statement.
- (7) If the Authority decides to take action against a person under section 131G, the person may refer the matter to the Tribunal.

### **131I Duty on publication of statement**

After a statement under section 131G(3) is published, the Authority must send a copy of the statement to—

- (a) the person in respect of whom it is made; and
- (b) any person to whom a copy of the decision notice was given under section 393(4).

### **131J Imposition of penalties under section 131G: statement of policy**

- (1) The Authority must prepare and issue a statement of its policy with respect to—
  - (a) the imposition of penalties under section 131G; and
  - (b) the amount of penalties under that section.
- (2) The Authority's policy in determining what the amount of a penalty should be must include having regard to—
  - (a) the seriousness of the contravention;
  - (b) the extent to which the contravention was deliberate or reckless; and
  - (c) whether the person on whom the penalty is to be imposed is an individual.
- (3) The Authority may at any time alter or replace a statement issued under this section.
- (4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replaced statement.
- (5) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (6) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (7) The Authority may charge a reasonable fee for providing a person with a copy of the statement.
- (8) In exercising, or deciding whether to exercise, a power under section 131G in the case of any particular contravention, the Authority must have regard to any statement of policy published under this section and in force at a time when the contravention occurred.

### **131K Statement of policy: procedure**

- (1) Before issuing a statement under section 131J, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the Authority issues the proposed statement it must publish an account, in general terms, of—
  - (a) the representations made to it in accordance with subsection (2); and
  - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.”