MAYER • BROWN

Financial Service Legal Alert

FSA's updated FAQs on new short selling rules for financial stocks

The UK Financial Services Authority (the "FSA") has this evening issued a revised set of questions and answers ("FAQs") on the new short selling rules for financial stocks. The FAQs do not constitute FSA Guidance.

The FAQs are set out under the following headings: general; derivatives; prohibition; disclosure; and further questions.

A link to the FAQs can be found at www.fsa.gov.uk under the heading "Latest publications".

The FSA has attempted to clarify (under question 15) the question of whether any holdings in a UK financial sector company that are held as part of a basket of shares or a share index should be included in any aggregation of a person's economic interest in the company. The FAQs state that any economic interest held as part of a basket, index or exchange traded fund ("ETF") where the predominance of the components in the basket, index or ETF are UK financial sector companies must be included (emphasis added).

Further guidance is provided on what is meant by "market maker" – as noted in the previous FAQs the term is not connected to the definition of market maker in the FSA Handbook. The FSA's indicative view on market making for the purposes of the new rules is as follows:

23 September 2008

"A market maker is an entity that, ordinarily as part of their business, deals as principal in equities, options or derivatives (whether OTC or exchange-traded):

(a) to fulfil orders received from clients, in response to a client's request to trade or to hedge positions arising out of those dealings; and/or

(b) in a way that ordinarily has the effect of providing liquidity on a regular basis to the market on both bid and offer sides of the market in comparable size. Trading in circumstances other than genuinely for the provision of liquidity is not exempt."

The FSA has also clarified that it is not imposing any additional restrictions on stock lending activities. Firms that do lend stock are advised to be vigilant and, where they suspect that stock is being borrowed for the purpose of prohibited short selling, to alert the FSA. A sale of lent stock would not create a short position for the stock lender but would for the borrower.

Other points to note include confirmation that the new provisions do apply to black box trading and that issuers of convertible bonds are not considered to be short selling. There is also additional guidance for fund managers, and firms with multiple trading desks.

mayerbrown.com

If you have any questions or require further information on any matter discussed in this publication, please contact Nick Kynoch, Peter Richards-Carpenter or Angela Hayes or your usual regular contact at Mayer Brown.

Nick Kynoch

Partner, Financial Services Regulatory and Enforcement
Tel: +44 (0)20 7782 8197

Peter Richards-Carpenter

Partner, Financial Services Regulatory and Enforcement
T +44 (0)20 7782 8998

Angela Hayes

Partner, Financial Services Regulatory and Enforcement
T +44 (0)20 7782 8311

0167fin
September 2008

mayerbrown.com

0166fin

September 2008