

# Client Alert

Latham & Watkins  
Corporate Department

## Fourth Update: New Short-Selling Restrictions in the United States and Recommendations For a Pan-European Short-Selling Disclosure Regime

### *Status Update on Global Short-Selling Restrictions*

"The SEC has adopted rules that provide for a combination of a 'circuit-breaker' approach with the so called 'Alternative Uptick Test' "

"The CESR has recommended a two-tier model disclosure regime to be implemented by all countries in the European Economic Area "

Recent releases by the US Securities and Exchange Commission (the SEC) and the Committee of European Securities Regulators (the CESR) highlight continuing regulatory activity relating to short selling in the United States and the European Union.

On February 24, 2010, the SEC released a set of rules that will restrict short selling of listed equity securities.<sup>1</sup> The rules introduce a "circuit-breaker uptick test" that will prevent short-sale orders at a price less than or equal to the current national best bid price, if the price of such covered security has decreased by 10 percent or more from the previous day's closing price. The rules will become effective on May 10, 2010, and market participants must comply with the new rules by November 10, 2010.

On March 2, 2010, the CESR issued a report to European regulatory institutions recommending a pan-European short-selling disclosure regime.<sup>2</sup> Under the proposed regime, net short positions should be disclosed to the relevant competent authority once a party's net short position reaches

0.2 percent of the outstanding capital stock of an issuer. After the position reaches the 0.5 percent threshold, and any additional 0.1 percent thereafter, the position should also be disclosed to the market as a whole. In Germany, BaFin has already released new rules deviating slightly from the CESR model.<sup>3</sup>

We summarize the key aspects of the rules adopted by the SEC and the rules recommended by the CESR in more detail in this Alert. In addition, in Annex I, we summarize, in chart form, the status of short-selling regulations across a variety of major jurisdictions, including the United States, Hong Kong, the United Kingdom, Germany, France, Italy and Spain.

### **The SEC's Final Rules**

#### **Scope of the Final Rules**

The SEC has adopted rules that provide for a combination of a "circuit-breaker" approach with the so called "Alternative Uptick Test."<sup>4</sup> The rules apply to trading of *covered securities* taking place during *regular trading hours*. The final rules

are also intended to cover overseas transactions arranged in the United States.<sup>5</sup>

- Covered securities — generally include all securities, except for options, listed on a national securities exchange (regardless of whether traded on an exchange or over-the-counter market).<sup>6</sup>
- Regular Trading Hours — 9:30 a.m. to 4:00 p.m. Eastern time.<sup>7</sup>

### **The Circuit-Breaker Approach**

After considering, during the course of last year, both market-wide uptick rules and circuit-breaker measures,<sup>8</sup> the SEC ultimately adopted a circuit-breaker rule coupled with the Alternative Uptick Test. Accordingly, restrictions on short selling will only apply to individual covered securities that have triggered the circuit-breaker during regular trading hours, by suffering a price decline of 10 percent or more from the previous day's closing price.

Once the circuit-breaker has been reached, short sales in the covered security may only be effected in accordance with the Alternative Uptick Test or one of the enumerated exemptions during the remainder of the regular trading day and for the entire following trading day. The listing market<sup>9</sup> for the covered security will be responsible for determining that the 10 percent circuit breaker has been met and will relay this information to the single plan processor<sup>10</sup> for broader dissemination.

### **The Alternative Uptick Test**

In contrast to the "Uptick Test" under former Rule 10a-1 under the Securities Exchange Act of 1934<sup>11</sup> and the "Modified Uptick Test" considered in the Proposing Release<sup>12</sup>, the Alternative Uptick Test does not use the last sale price as a reference point for short-sale orders. Rather, the Alternative Uptick Test requires that a short-sale order be

submitted and initially displayed at a price higher than the current national best bid price.<sup>13</sup> Although the new rules do not specify the minimum pricing increment by which the short-sale order must exceed the national best bid, the standard minimum pricing increment remains in effect.<sup>14</sup>

### **"Short Exempt" Orders**

In the context of the new rules and current order marking requirements, the "short exempt" designation applies to short sales executed while the circuit breaker is in effect. The broker or dealer may mark an order "short exempt" only if the requirements of the Alternative Uptick Test are met or one of the following exemptions applies. The exemptions generally parallel those offered under Regulation SHO in other contexts and formerly under Rule 10a-1:

- owners of restricted securities who intend to deliver them as soon as all restrictions are removed;
- brokers or dealers offsetting odd-lot orders or positions;
- convertible and cross-border arbitrageurs;
- traders who wish to sell short the covered security on a VWAP basis;<sup>15</sup>
- underwriters or members of a syndicate or group participating in the distribution of and over-allotment of securities; or
- brokers or dealers executing a riskless principal transaction to facilitate a customer's "long" sale.<sup>16</sup>

### **Obligations of Trading Centers, Brokers and Dealers**

The new rules rely on "trading centers"<sup>17</sup> and brokers and dealers for the implementation of the new restrictions. Trading centers are required to "establish, maintain and enforce written policies and procedures"<sup>18</sup> reasonably designed to prevent the execution or display of short-sale orders that violate the restrictions, while brokers and dealers must "establish,

maintain and enforce written policies and procedures”<sup>19</sup> to ensure that orders are not incorrectly marked “short exempt.” In addition, both trading centers and brokers and dealers must regularly review their policies and procedures to ensure that they are effective and take prompt remedial action if deficiencies are found.

## The CESR Model for a Pan-European Short-Selling Disclosure Regime

### Scope of the Recommended Model Rules

The CESR has recommended a two-tier model disclosure regime to be implemented by all countries in the European Economic Area (the EEA). The recommended disclosure regime would apply to all short positions creating an economic exposure to shares admitted to trading on any EEA regulated market and/or an EEA multilateral trading facility (an EEA MTF). However, the recommended disclosure regime will exclude securities whose primary market is located outside the EEA.

The recommended disclosure regime would apply to all financial instruments (including derivatives, exchange traded funds, indices and baskets) that create economic exposure to an issuer’s outstanding equity securities. All market participants must make the required disclosures regardless of whether they are regulated or unregulated entities operating within or outside of the EEA.

### The Two-Tiered Disclosure Regime

The recommended disclosure regime requires market participants to disclose net short position to the relevant market regulator when a net short exposure exceeds 0.2 percent of an issuer’s outstanding capital stock. In addition, if the net short exposure is greater than 0.5 percent of an issuer’s outstanding capital stock, then the market

participant will be required to disclose its net short exposure to the public and the regulator. The recommended disclosure regime additionally requires incremental disclosures of increases or decreases in the net short position at 0.1 percent thresholds,<sup>20</sup> until the net short exposure has fallen below the 0.2 percent threshold.<sup>21</sup>

Market participants will be required to make the relevant disclosure on the trading day after the threshold has been reached, however, the mechanics of making these disclosures have not yet been determined. In addition, market makers “genuinely acting in the capacity of a market maker” will be exempt from making disclosures. However, the CESR has not yet established a definition of “market maker.”

### Endnotes

- <sup>1</sup> The SEC’s press release is available at <http://sec.gov/news/press/2010/2010-26.htm>; see also Exchange Act Release No. 34-61595 (February 24, 2010)(the “Final Release”) available at <http://sec.gov/rules/final/2010/34-61595.pdf>
- <sup>2</sup> The CESR’s press release is available at <http://www.cesr.eu/popup2.php?id=6488>; see also The CESR “Report: Model for a Pan-European Short Selling Disclosure Regime” (Ref. CESR/10-088, the “Report”) is available at <http://www.cesr.eu/popup2.php?id=6487>
- <sup>3</sup> See the “Germany” column in Annex I for additional details.
- <sup>4</sup> The Alternative Uptick Test prohibits “a short sale order of a covered security at a price that is less than or equal to the current national best bid.” See the Final Release at 329.
- <sup>5</sup> The SEC seeks to clarify “that Rule 201 applies to any short sale effected using the United States jurisdictional means, regardless of the jurisdiction in which the short sale is executed”, the Final Release at 158.
- <sup>6</sup> To be precise, the final rules apply to covered securities, which are defined to include any “NMS stock.” Final Release, at 329. Under Rule 600(b)(47) of Regulation NMS, NMS stocks include all NMS securities, except options. 17 C.F.R. 242.600(b)(47). In turn, Rule 600(b)(46) of Regulation NMS defines an “NMS security” as “any security or class of securities for which

transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” 17 C.F.R. 242.600(b)(46).

<sup>7</sup> For a formal definition of “regular trading hours,” see Rule 600(b)(64) of Regulation NMS, 17 C.F.R. 242.600(b)(64).

<sup>8</sup> Exchange Act Release No. 34-59748 (Apr. 10, 2009), 74 Fed. Reg. 18,042 (Apr. 20, 2009) (the “**Proposing Release**”), available at <http://www.sec.gov/rules/proposed/2009/34-59748fr.pdf>. Comments submitted to the SEC are available at <http://www.sec.gov/comments/s7-08-09/s70809.shtml>.

<sup>9</sup> Listing market has the same meaning as “listing market” as defined in the effective transaction reporting plan for the covered security.

<sup>10</sup> Plan processor means any self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan. See Rule 600(b)(55) of Regulation NMS, 17 C.F.R. 242.600(b)(55).

<sup>11</sup> In July 2007, after eight years of study, the SEC repealed the prior uptick rule, former Rule 10a-1, which restricted short sales based on a last sale price test.

<sup>12</sup> See the Proposing Release.

<sup>13</sup> The Final Release uses the definition of “national best bid” defined in Rule 600(b)(42) of Regulation NMS, 17 C.F.R. 242.600(b)(42).

<sup>14</sup> For any NMS stock priced equal to or greater than \$1.00, the minimum increment is \$0.01, and for any NMS stock priced less than \$1.00, the minimum increment is \$0.0001. See 17 C.F.R. 242.612.

<sup>15</sup> VWAP is defined as “calculating the values of every regular way trade reported in the consolidated system for the security during the regular trading session, by multiplying each such price by the total number of shares traded at that price”. See the Final Release at 333.

<sup>16</sup> The rules additionally require that the broker or dealer implement written policies and procedures to ensure that there is customer order at the time of the trade, that the offsetting transaction is allocated to the customer’s account or a riskless principal account within 60 seconds of execution and that there are adequate supervisory systems. See the Final Release at 332.

<sup>17</sup> Under Rule 600(b)(78) of Regulation NMS, a trading center is defined as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” 17 C.F.R. 242.600(b)(78).

<sup>18</sup> The Final Release, at 330.

<sup>19</sup> *Id.* at 331.

<sup>20</sup> Further notifications at 0.3 percent and 0.4 percent are only required to be made to the regulator, while further notifications at 0.6 percent, 0.7 percent etc. must be made to the public and the regulator. See the Report at 9.

<sup>21</sup> Notification is also required when the net short position falls below either the 0.5 percent higher threshold or the 0.2 percent lower threshold. See the Report at 9.

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## ANNEX I: Summary of Global Short-Selling Regulations

Country	United States
<b>Status Update</b>	<p>On February 24, 2010, the SEC adopted new rules which will temporarily restrict the short selling of particular "covered securities"<sup>1</sup> whose prices fell by more than 10 percent.</p> <p>While the restrictions are in effect, short sales of the covered security may only be effected at a price greater than the national best bid price.</p> <p>The restrictions will be in effect for the remainder of the trading day and the entire following day.</p> <p>Disclosure rules adopted during the fall of 2008 expired on August 1, 2009.</p> <p>Hard delivery requirements adopted during the fall of 2008 made permanent in July 2009.<sup>2</sup></p>
<b>Regulated Activity</b>	<p>The final rules will temporarily restrict the short selling of particular covered securities whose prices fell by more than 10 percent from their previous closing prices.</p> <p>The restriction only applies during regular trading hours.</p> <p>"Naked" short sales remain subject to specific anti-fraud rules.</p> <p>Hard delivery settlement requirements adopted during the fall of 2008 and made permanent in July 2009 apply to both "long" and "short" sales.</p>
<b>Derivatives</b>	<p>Affected indirectly; derivatives themselves are not covered directly, but rules would apply to hedging done in connection with any derivatives.</p>
<b>Relevant Exceptions</b>	<p><i>February 2010 Final Rules:</i> See list of exceptions above under "Short Exempt Orders".</p> <p><i>"Naked" Short-selling Anti-Fraud Rule:</i> market-makers engaged in bona fide market-making.</p> <p><i>Hard Delivery Requirement:</i> market-makers engaged in bona fide market-making activities or not having a fail-to-deliver position at the time of any additional short sales.</p>
<b>Disclosure</b>	<p>None.</p>
<b>Expiration</b>	<p>Indefinite.</p>

<b>Country</b>	<b>Hong Kong</b>
<b>Status Update</b>	<p>On March 2, 2010, the Securities and Futures Commission (the SFC) released "Consultation Conclusions on Increasing Short Position Transparency" which propose disclosure of gross short positions that exceed the lesser of 0.02 percent of an issuer's outstanding capital stock or HK\$30 million on a weekly basis.<sup>3</sup></p> <p>Under the proposed regime, the SFC will publish a weekly list of anonymous aggregate short positions.</p> <p>Otherwise, no changes to the existing short-selling regime.</p>
<b>Regulated Activity</b>	<p>The proposed rules will regulate the establishment, increase or decrease of gross short positions in "Designated Securities".</p> <p>Under the current rules "Naked" short sales executed on the HKEx's Automatic Order Matching and Execution System.</p> <p>"Covered" short sales of stocks not on the HKEx's list of "Designated Securities Eligible for Short Selling"<sup>4</sup> subject to various disclosure requirements and a "tick" rule.</p>
<b>Derivatives</b>	<p>Under the proposed rules, derivatives will be affected indirectly; derivatives themselves are not covered directly, but reporting requirements apply to any short selling, including hedging done in connection with any derivatives.</p> <p>Under the current rules, derivatives are affected indirectly; derivatives themselves are not covered directly, but the prohibition applies to any short selling, including hedging done in connection with any derivatives.</p>
<b>Relevant Exceptions</b>	<p>Under the proposed rules, there are no exemptions from reporting requirements.</p> <p>Under the current rules, market participants may short sell any stocks listed on the HKEx's "Designated Securities Eligible for Short Selling" if the short sales are executed on HKEx's Automatic Order Matching and Execution System.</p> <p>Certain designated index arbitrage transactions are exempt from the "tick" rule.</p> <p>Transactions by market-makers in market-making or risk-hedging capacities are also exempt from the "tick" rule.</p> <p>Any off-exchange sales.</p>
<b>Disclosure</b>	<p>Under the proposed rules, market participants must disclose gross short positions weekly, on the last trading day of the week, to the regulator (reports due by the second trading day of the following week). The regulator will aggregate and publish an anonymous list of short positions the following week.</p> <p>Under the current rules, exchange participants submitting short sales must mark their sales as short or face criminal penalties.</p>
<b>Expiration</b>	<p>The SFC will issue a separate consultation paper regarding the proposed new regime.</p> <p>Current regulations: indefinite; proposal to eliminate the "tick rule" was defeated in 2008.</p>

<b>Country</b>	<b>United Kingdom</b>
<b>Status Update</b>	<p>On March 2, 2010, the CESR released recommendations for a model reporting short-selling regime (see summary above).</p> <p>In October 2009, the FSA issued a feedback statement detailing the responses it received to the February 2009 discussion paper.</p> <p>In June 2009, the FSA extended its rules requiring the disclosure of significant short positions in UK financial services stocks indefinitely.<sup>5</sup></p>
<b>Regulated Activity</b>	<p>The CESR recommended regulations, if enacted without modification, will regulate the establishment, increase or decrease of a net short position of at least 0.2 percent of the outstanding capital stock of an issuer.</p> <p>The current rules regulate the establishment, increase or decrease of a net short position of at least 0.25 percent of a UK financial services company's issued shares.<sup>6</sup></p>
<b>Derivatives</b>	<p>Under the CESR recommended rules, derivatives will be affected directly because they are included in the calculation of net short positions.</p> <p>Under the current rules, derivatives are affected indirectly; derivatives themselves are not covered directly, but the prohibition applies to any short selling, including hedging done in connection with any derivatives.</p>
<b>Relevant Exceptions</b>	<p>Under the CESR recommended rules, market-makers "genuinely acting in the capacity of a market maker".</p> <p>Under the current regime, market-makers who deal in equities, options or derivatives (i) to fulfill client orders, which would not result in a violation of the rules by that client, and/or (ii) as part of their regular activities designed to provide liquidity to the market on both bid and offer sides.</p>
<b>Disclosure</b>	<p>Under the CESR recommended rules, market participants must disclose net short positions exceeding 0.2 percent of an issuer's stock to the regulator and must disclose net short positions exceeding 0.5 percent of an issuer's stock to the public. In addition, market participants must make disclosures at each 0.1 percent interval greater than either threshold and when the net short position falls below a relevant threshold.</p> <p>Under the current rules, market participants must disclose their short positions whenever their net short positions reach, exceed or fall below 0.25 percent of a company's issued share capital and whenever they reach, exceed or fall below each 0.1 percent threshold thereafter.</p>
<b>Expiration</b>	<p>The CESR recommendations to be taken up by the FSA.</p> <p>Current regulations: indefinite, pending implementation of international rules.</p>

<b>Country</b>	<b>France</b>
<b>Status Update</b>	<p>On March 2, 2010, the CESR released recommendations for a model reporting short-selling regime (see summary above)</p> <p>On January 26, 2010, the AMF Board extended its September 19, 2008 rules, which restrict the short selling of financial stocks.</p>
<b>Regulated Activity</b>	<p>The CESR recommended regulations, if enacted without modification, will regulate the establishment, increase, or decrease of a net short position of at least 0.2 percent of the outstanding capital stock of an issuer.</p> <p>"Naked" short sales and the creation or increase of net short positions in approximately 15 publicly quoted credit institutions and insurance companies designated by the AMF.<sup>7</sup></p>
<b>Derivatives</b>	<p>Under the CESR recommended rules, derivatives will be affected directly because they are included in the calculation of net short positions.</p> <p>Under the current rules, derivatives are affected directly.</p>
<b>Relevant Exceptions</b>	<p>Under the CESR recommended rules, market-makers "genuinely acting in the capacity of a market maker".</p> <p>Under the current regime, statutory "investment service providers" acting as market-makers, liquidity providers and block trade positioners. Financial intermediaries acting as the investors' counterparties must ensure that investors do not create net short positions.</p> <p>Short sales with respect to hedging of index and basket trades containing securities on the list may be effected only if the seller owns the relevant securities at the time of the sale (a borrowed security is considered "owned" for these purposes).</p> <p>Lending restrictions on the listed securities do not apply if the borrower seeks to cover a pre-existing commitment or if the borrower seeks to engage in a transaction that will not create or relate to the creation of a short position.</p>
<b>Disclosure</b>	<p>Under the CESR recommended rules, market participants must disclose net short positions exceeding 0.2 percent of an issuer's stock to the regulator and must disclose net short positions exceeding 0.5 percent of an issuer's stock to the public. In addition, market participants must make disclosures at each 0.1 percent interval greater than either threshold and when the net short position falls below a relevant threshold.</p> <p>Under the current regime, market participant must daily report any net short position that exceeds a defined threshold, such as 0.25 percent of an issuer's net share capital. Market participants must also disclose any changes to such net short positions.</p> <p>Additionally, short sellers must report to regulators the volumes and prices of any securities loans.</p>
<b>Expiration</b>	<p>The CESR recommendations to be taken up by the AMF.</p> <p>Current regulations: indefinite, pending implementation of international rules.</p>

<b>Country</b>	<b>Germany</b>
<b>Status Update</b>	<p>On March 4, 2010, BaFin released a decree requiring the disclosure of net short positions in a specified list of 10 public financial companies greater than 0.2 percent to regulators and greater than 0.5 percent to the public.<sup>8</sup></p> <p>On March 2, 2010, the CESR released recommendations for a model reporting short-selling regime (see summary above).</p> <p>BaFin allowed its ban on the "naked" short selling of 11 public financial companies to expire without renewal on January 31, 2010.<sup>9</sup></p>
<b>Regulated Activity</b>	The establishment, increase or decrease of a net short position of at least 0.2 percent of the 10 specified public financial companies' issued shares.
<b>Derivatives</b>	Affected directly; calculation of net short positions includes all financial instruments.
<b>Relevant Exceptions</b>	Market-makers to the extent that the respective transaction is necessary for the performance of contractual market making obligations.
<b>Disclosure</b>	Under the new rules, market participants must disclose net short positions exceeding 0.2 percent of an issuer's stock to the regulator and must disclose net short positions exceeding 0.5 percent of an issuer's stock to the public in an anonymised form. In addition, market participants must make disclosures at each 0.1 percent interval greater than either threshold and when the net short position falls below a relevant threshold.
<b>Expiration</b>	The decree expires on January 31, 2011.

<b>Country</b>	<b>Italy</b>
<b>Status Update</b>	<p>On March 2, 2010, the CESR released recommendations for a model reporting short-selling regime (see summary above).</p> <p>The Italian Securities and Exchange Commission (Consob) allowed its ban on short sales to expire on November 30, 2009. Prohibition against short sales on companies which approved a capital increase prior to November 30, 2009 remains in force. Companies may be excluded from the short-selling ban.<sup>10</sup></p> <p>In January 2009, Consob also started a consultation process on its short-selling regulations, but according to a July 29, 2009 press release, Consob is waiting on the CESR recommendations.<sup>11</sup></p>
<b>Regulated Activity</b>	<p>The CESR recommended regulations, if enacted without modification, will regulate the establishment, increase or decrease of a net short position of at least 0.2 percent of the outstanding capital stock of an such capital issuer.</p> <p>Under the current regulation, for company's approving a capital increase prior to November 30, 2009, short sales are prohibited until increase is complete.</p>
<b>Derivatives</b>	<p>Under the CESR recommended rules, derivatives will be affected directly because they are included in the calculation of net short positions.</p> <p>Under the current rules, derivatives are affected indirectly; derivatives themselves are not covered directly, but the clearing and settlement systems for financial instruments is required to "adopt any and all measures to prevent speculative manoeuvres."<sup>12</sup></p>
<b>Relevant Exceptions</b>	<p>Under the CESR recommended rules, market-makers "genuinely acting in the capacity of a market maker".</p> <p>Under the current rules, short sales of all stocks not engaged in a capital increase approved prior to November 30, 2009 and companies whose stock is excluded from the short-selling ban. In addition, short sales by market makers, liquidity providers, and "specialists."</p>
<b>Disclosure</b>	<p>Under the CESR recommended rules, market participants must disclose net short positions exceeding 0.2 percent of an issuer's stock to the regulator and must disclose net short positions exceeding 0.5 percent of an issuer's stock to the public. In addition, market participants must make disclosures at each 0.1 percent interval greater than either threshold and when the net short position falls below a relevant threshold.</p> <p>Under the current rules no disclosure requirements.</p>
<b>Expiration</b>	<p>The CESR recommendations to be taken up by Consab.</p> <p>Current regulations: indefinite.</p>

<b>Country</b>	<b>Spain</b>
<b>Status Update</b>	<p>On March 2, 2010, the CESR released recommendations for a model reporting short-selling regime (see summary above).</p> <p>Otherwise, no changes to the existing short-selling regime.</p>
<b>Regulated Activity</b>	<p>The CESR recommended regulations, if enacted without modification, will regulate the establishment, increase or decrease of a net short position of at least 0.2 percent of the outstanding capital stock of an issuer.</p> <p>The current rule regulates "Naked" short sales in publicly traded companies and short sales in certain publicly traded financial companies.</p>
<b>Derivatives</b>	<p>Under the CESR recommended rules, derivatives will be affected directly because they are included in the calculation of net short positions.</p> <p>Under the current rules, derivatives are affected indirectly; derivatives themselves are not covered directly, but the prohibition applies to any short selling, including hedging done in connection with any derivatives.</p>
<b>Relevant Exceptions</b>	<p>Under the CESR recommended rules, market-makers "genuinely acting in the capacity of a market maker".</p> <p>Under the current regime, "market-makers" and "liquidity providers" in the course of their regular activities and in view of their operating needs.</p>
<b>Disclosure</b>	<p>Under the CESR recommended rules, market participants must disclose net short positions exceeding 0.2 percent of an issuer's stock to the regulator and must disclose net short positions exceeding 0.5 percent of an issuer's stock to the public. In addition, market participants must make disclosures at each 0.1 percent interval greater than either threshold and when the net short position falls below a relevant threshold.</p> <p>Under the current rules, market participants must report daily any short position that exceeds or crosses 0.25 percent of an issuer's underlying securities.</p>
<b>Expiration</b>	<p>The CESR recommendations to be taken up by CNMV.</p> <p>Current regulations: indefinite; until further notice from CNMV.</p>

### Endnotes

- <sup>1</sup> As noted above, the rules apply only to covered securities, which include all securities, except options, listed on a national securities exchange (regardless of whether traded on exchange or in an over-the-counter market). *Supra* note 6.
- <sup>2</sup> See Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38266 (July 31, 2009) (“**Rule 204 Adopting Release**”). Rule 204 contained some modifications to address commenters’ concerns.
- <sup>3</sup> Press Release, Securities and Futures Commission, “SFC to adopt new short-position reporting regime” (Mar. 2, 2010), *available at* <http://www.sfc.hk/sfcPressRelease/EN/sfcOpenDocServlet?docno=10PR23>.
- <sup>4</sup> An updated list of the designated stocks can be obtained from the HKEx’s website under the section entitled “Trading Information - Securities Market - Designated Securities Eligible for Short Selling,” *available at* <http://www.hkex.com.hk/tradinfo/secshortsell/secshortsell.htm>.
- <sup>5</sup> Financial Services Authority “Policy Statement 09/10: Extension of the short selling disclosure obligation: Feedback to CP09/15” (June 26, 2009) *available at* [http://www.fsa.gov.uk/pubs/policy/ps09\\_10.pdf](http://www.fsa.gov.uk/pubs/policy/ps09_10.pdf).
- <sup>6</sup> For discussion of the regulations, see “Policy Statement 09/1: Temporary short selling measures: Feedback on CP09/1,” *available at* [http://www.fsa.gov.uk/pubs/policy/ps09\\_01.pdf](http://www.fsa.gov.uk/pubs/policy/ps09_01.pdf), see also “Feedback Statement 09/4: Short selling: Feedback on DP09/1” *available at* [http://www.fsa.gov.uk/pubs/discussion/fs09\\_04.pdf](http://www.fsa.gov.uk/pubs/discussion/fs09_04.pdf).
- <sup>7</sup> As noted in its January 27, 2010 press release, the AMF is maintaining its September 19, 2008 short-selling regulations. More information on those regulations, including a list of affected financial stocks, is *available at* [http://www.amf-france.org/documents/general/8425\\_1.pdf](http://www.amf-france.org/documents/general/8425_1.pdf).
- <sup>8</sup> Press Release, Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), “BaFin introduces transparency system for net short-selling positions” (Mar. 4, 2010), *available at* [http://www.bafin.de/clin\\_179/nn\\_720788/SharedDocs/Mitteilungen/EN/2010/pm\\_100304\\_leerverk\\_transparenz\\_en.html](http://www.bafin.de/clin_179/nn_720788/SharedDocs/Mitteilungen/EN/2010/pm_100304_leerverk_transparenz_en.html). See also, “General Decree on the introduction of a transparency obligation for net short-selling positions of the Federal Financial Supervisory Authority (BaFin) of 4 March 2010” *available at* [http://www.bafin.de/clin\\_179/nn\\_720788/SharedDocs/Aufsichtsrecht/EN/Verfuegungen/vf\\_100304\\_leervk\\_transparenz\\_en.html](http://www.bafin.de/clin_179/nn_720788/SharedDocs/Aufsichtsrecht/EN/Verfuegungen/vf_100304_leervk_transparenz_en.html).
- <sup>9</sup> Final extension of short-selling General Decree, *available at* [http://www.bafin.de/clin\\_161/nn\\_720494/SharedDocs/Artikel/EN/Service/Meldungen/meldung\\_090529\\_leerv\\_verlaeng.html?\\_\\_nnn=true](http://www.bafin.de/clin_161/nn_720494/SharedDocs/Artikel/EN/Service/Meldungen/meldung_090529_leerv_verlaeng.html?__nnn=true).
- <sup>10</sup> Press Release, Consob, “Short sales: prohibition expires. Restrictions in force only for companies increasing their capital as of November 30, 2009” (Nov. 30, 2009), *available at* [http://www.consob.it/mainen/press\\_release/comunicato\\_20091130.htm](http://www.consob.it/mainen/press_release/comunicato_20091130.htm).
- <sup>11</sup> Press Release, Consob, “Measures on short sales” (Jul. 29, 2009), *available at* [http://www.consob.it/mainen/press\\_release/comunicato\\_20090729.htm](http://www.consob.it/mainen/press_release/comunicato_20090729.htm).
- <sup>12</sup> Consob Resolution no. 16971 of July 28, 2009 “Measures on short sales of securities aimed at ensuring the orderly conduct of trading and the integrity of the market”

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