

Client Alert: The FSA of Japan finalized the revisions of the short-selling regulations**1. Summary**

This newsletter provides you with follow-up information concerning our previous newsletter published in March, 2011.¹ On April 30, the FSA published the draft rules and solicited public comments,² and on August 21, 2013, the FSA published the final rules, together with its response to the public comments on the amendment to the rules.³

2. Proposed amendments become final rules

The FSA drafted and finalized the rules based on the outline of its proposed rules announced in March 2013. Accordingly, the final rules include the following changes as explained in our previous newsletter:

- (1) the short-selling restrictions will become applicable to short sales in a Proprietary Trading System⁴ where an order is executed via auction, with a market-making broker or against matching limit orders;
- (2) the up-tick rule will become applicable only if the price of the securities falls by more than 10% from its closing price on the previous day. Once the up-tick rule is triggered, the price restriction remains in effect until the closing on the following day;
- (3) the prohibition of naked short selling will become permanent;
- (4) a short sale position amounting to (i) 0.2% will trigger the reporting requirement, and (ii) 0.5% will trigger the disclosure requirement;
- (5) (i) changes of 0.1% or more in a short sale position will trigger the reporting requirement, and (ii) changes in a short sale position that bring the short sale position to below a 0.2% or 0.5% threshold level will trigger the reporting or disclosure requirement, respectively; and
- (6) some revisions were made regarding the exempted transactions.

3. Persons to report

The new rules will also clarify who is subject to the reporting obligation where a partnership-type

investment fund sells short. Under the current rules, investment managers of an investment trust or investment corporation or discretionary investment advisors are subject to the reporting obligations, rather than their investors. The new rules clarify that general partners of partnership-type investment funds are subject to the reporting obligation.

4. Effective date

These Amendments will become effective on November 5, 2013. Investors and broker-dealers should prepare for the new regime.

¹ Available at:
http://www.jurists.co.jp/ja/topics/docs/newsletter_20130319_finance.pdf.

² Available at: <http://www.fsa.go.jp/news/24/syouken/20130430-6.html>.

³ Available at: <http://www.fsa.go.jp/news/25/syouken/20130821-3.html>.

⁴ A PTS is an electronic trading system operated by a broker with a special FSA license. It is similar to an Alternative Trading System in the U.S. market.

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