Monetary Authority of Singapore

SECURITIES AND FUTURES ACT (CAP. 289)

GUIDELINES ON THE REGULATION OF SHORT SELLING

14 DECEMBER 2016

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Guideline No : SFA 07A-G01

Issue Date : 14 December 2016

1 PURPOSE OF THESE GUIDELINES

1.1 These Guidelines on the Regulation of Short Selling ("Guidelines") are issued by the Monetary Authority of Singapore ("MAS") pursuant to section 321 of the Securities and Futures Act (Cap. 289) ("SFA"). These Guidelines aim to provide market participants with a better understanding of how MAS will administer the legislative provisions relating to short selling in Part VIIA of the SFA.

1.2 These Guidelines should be read in conjunction with the provisions of Part VIIA of the SFA and the Securities and Futures (Short Selling) Regulations ("Regulations"), and where relevant, other provisions of the SFA.

1.3 The Guidelines on Short Selling Disclosure issued on 9 January 2013 are revoked.

2 SHORT SELLING

2.1 Short selling is the sale of capital markets products that the seller does not own at the time of the sale. Short selling may either be ‘covered’ or ‘uncovered’. In ‘covered’ short selling, at the time of the sale, the seller has borrowed the capital markets products or has otherwise made arrangements to fulfil his obligation to deliver the capital markets products. In ‘uncovered’ short selling (also referred to as ‘naked’ short selling), at the time of the sale, the seller is not in possession of the capital markets products or has not otherwise made arrangements to meet his delivery obligation.

2.2 Short selling allows for more efficient price formation, increases market liquidity, facilitates risk management and facilitates the development of hedging activities. However, when there is significant market uncertainty, short selling could result in increased market volatility, potentially leading to disorderly markets. Short selling may also be used as a tool in market abuse, for example where it is accompanied by false rumours designed to encourage others to sell. ‘Uncovered’ short selling may also result in disruptions to the settlement process.

2.3 Internationally, many securities markets have measures in place to mitigate the potential negative effects of short selling, such as restricting the price of short sales or requiring short sellers to borrow securities before short selling them.

2.4 In Singapore, the Central Depository (Pte) Limited (“CDP”) mitigates short selling’s potentially disruptive effects on the settlement system by purchasing securities on behalf of sellers who do not possess securities for delivery on settlement day (commonly referred to as the “buying-in” process). Where CDP carries out buying-in, the cost of purchase and an additional penalty is charged to the seller who failed to deliver the securities. In addition, the Singapore Exchange Securities Trading Limited (“SGX-ST”) conducts surveillance to detect market abuse.

2.5 These measures help mitigate some of the potential negative effects of short selling and ensure that markets continue to function in an orderly and efficient manner.

3 INFORMATION ON SHORT SELLING

3.1 International standards[1] recommend that jurisdictions adopt enhanced and meaningful short selling reporting. Information on short selling activities is relevant to the trading decisions of market participants. For example, information that those securities are under sustained heavy short selling may indicate strong negative price pressure on those securities. Information on short sale transactions also helps to deter market abuse by alerting authorities to activities that may potentially disrupt the orderly functioning of markets, and aids in investigation and enforcement.

4 SHORT SELLING REQUIREMENTS

4.1 In Singapore, short sell orders for specified capital markets products must be disclosed and significant short positions must be reported. Currently, it is not required to take into account positions formed as a result of the use of derivatives (e.g. options, swaps) when calculating a short position.

4.2 Market participants should exercise care when interpreting information on short selling. For instance, information on short sale volume may not reflect the outstanding short position in those securities. Volume of short orders may include trades which have since been squared off by offsetting buy trades.

Disclosure of short sell orders

4.3 Section 137ZJ of the SFA requires a person (*A*) who places a short sell order on an approved exchange to, before or at the time of the short sell order, disclose that the order is a short sell order. Where another person *B* (e.g. a broker) places a short sell order on *A*'s behalf, *B* should enter the order only after *A* has disclosed to *B* whether the order is a short-sell order. In turn, *B* must, before or at the time of the short sell order, disclose to the approved exchange that the order is a short sell order.

[1] See OICV-IOSCO's Final Report on Regulation of Short Selling released in June 2009.

Sellers with some securities on hand

4.4 Market participants are expected to split partial short orders, where they own some but not the full quantity of securities to be sold, into two separate orders with the short-sell order marked accordingly. An example is shown in the box below.

Splitting of partial short orders

If a market participant owns 100 shares but would like to sell 300 shares, the market participant should submit two orders:

(i) a sell order of 100 shares, which should not be marked as a short order; and

(ii) a sell order of 200 shares, which should be marked as a short order.

Publication of short sell orders

4.5 Approved exchanges shall publish information on aggregated short orders, such as the volume and value of short orders, before the start of each trading day, the aggregate volume of short sell orders matched and executed on the preceding trading day and in respect of each specified capital markets product. Approved exchanges shall provide its members with a facility to correct erroneously marked sell orders.

4.6 Any person who fails to comply with these requirements shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding $25,000.

Exemption from the requirement to mark short sell orders

4.7 Designated market makers and registered market makers are exempted from the requirement to disclose short sell orders in respect of their market making activities as market makers' short sell order activity does not represent actual short sell interest. Removing market makers' short sell orders will avoid potential misrepresentation to the market on the level of short sell interest.

Reporting of short positions

Calculation of short position

4.8 Section 137ZK of the SFA and regulation 5 of the Regulations require a market participant to report his short position in a specified capital markets product, if the threshold in respect of the specified capital markets product is met or crossed. The threshold is the lower of:

(a) 0.05% of the outstanding shares in the relevant class of shares of the corporation in respect of the specified capital markets products; or

(b) S$1,000,000 in aggregate value of the outstanding shares in the relevant class of shares of the corporation in respect of the specified capital markets products.

4.9 The short position, regardless of whether the position has been settled, should be calculated on position day. "Position day" means the last day of each calendar week (typically a Friday) that the approved exchange is open for trading in the relevant class of shares of the corporation.

4.10 Derivatives are excluded for the purposes of calculating a short position as of a position day. For example, positions that may result from an option which has not been exercised as of position day should not be included in the calculation of a short position. Similarly, positions that may result from a warrant that has not been exercised as of position day should not be included in the calculation of a short position.

Persons with reporting responsibility

4.11 The reporting obligations are imposed on the legal owners of the shares, and not on persons with beneficial ownership of the shares or who control the shares. This means that, in the case of a trust or unit trust, the obligation to report short sell orders and short positions rests on the trustee. For funds structured as companies, the reporting obligation are imposed on the fund.

4.12 To avoid double counting and to minimise reporting burden, only the immediate legal owner is required to report short orders and short positions without a look through to intermediate or ultimate owners. This reporting approach also does not affect the aggregated information on short sell orders and short positions that will be published.

Exemption from the requirement to report short positions

4.13 Designated market makers are exempted from reporting short positions in respect of their market making activities. As such market makers are bound by the rules of an approved exchange to make markets, their short positions may be due to such obligations and thus may not necessarily reflect their views of the shares of a corporation.

4.14 In contrast, MAS is aware that there are other market makers registered with approved exchanges with a contractual obligation to make markets. As such market making activities are commercial arrangements that do not necessarily oblige the market makers to hold on to short positions beyond the end of the trading day, one view is that such short positions may reflect the market makers' views of the shares of a corporation.

Delegation

4.15 A short position holder (*A*) is permitted to get an agent (*B*) to report the short positions on *A*'s behalf.

Short position reporting timelines and process

4.16 A person who has a reportable short position shall report his short position to MAS two business days after the position day. The identity of the person (*A*) with a reportable short position, and if applicable, that of person *B* who has been authorised by *A* to lodge the report on *A*'s behalf shall also be provided to MAS.

4.17 The short position report shall be lodged with MAS via the Short Position Reporting System (SPRS) on MAS' website.

4.18 Any person who fails to comply with these requirements shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding $25,000 and, in the case of a continuing offence, to a further fine not exceeding $2,500 for every day or part thereof during which the offence continues after conviction.

5 Institutional participants with multiple trading desks

5.1 MAS is aware that institutional participants may have different trading decision practices. For example, an institutional investor may make its trading decision at a legal entity level, or it may have different trading units or desks that make trading decisions independently, where trades reflect different desks' independent sentiments about the shares of a corporations.

5.2 As institutional participants operate different trading decision models, MAS provides the flexibility to allow institutional participants to determine at which level (i.e. legal entity basis or trading desk basis) their orders or positions should be aggregated. Examples of different business models are shown in the following box.

Different business models

In a proprietary trading firm, a portfolio manager is responsible for three trading desks. As he is the key decision maker for trading decisions, positions may be aggregated across the three trading desks at the proprietary trading firm level as the trading decisions reflect his view on the specified capital markets products in the funds.

For a proprietary trading firm, each trading desk may also have a different mandate and trade independently of other desks. The firm may choose to report the short positions of each trading desk separately.

5.3 Where an institutional participant chooses not to aggregate orders or positions at the legal entity level, orders or positions should be aggregated at the highest possible level where trading decisions share the same influence (e.g. same portfolio manager). The considerations determining the level of aggregation must be documented. Care must also be taken to ensure that orders and positions are not double counted i.e. a short order or position reported by one trading desk should not be reported by another trading desks. Examples of disclosing short sell orders and reporting of short positions at a trading desk level are shown in the following boxes.

Disclosure of short orders at trading desk level
An institutional investor has two trading desks that each make independent trading decisions, and chooses to disclose at the trading desk level:

- Trading desk A with 100 shares
- Trading desk B with 0 shares
- Trading desk B wants to place a sell order of 300 shares

At the legal entity level, the institutional investor should place a sell order of 100 shares and disclose a short sell order of 200 shares.

If the institutional investor chooses to disclose at a trading desk level, trading desk B can mark a short sell order of 300 shares.

Disclosure of short positions at trading desk level

At the legal entity level, the institutional investor would have to report a short position of 200 shares.

If the institutional investor chooses to disclose short position at a trading desk level, trading desk B will have to report a short position of 300 shares.

5.4 Reporting has to be made on a consistent basis. For example, an institutional participant should not be aggregating at a trading desk level in one reporting period, and at the entity level in the next reporting period when trading decisions are consistently made at a trading desk level.

5.5 For the purpose of short position reporting at trading desk level, trading desks have to report all short positions, even if the short positions at the trading desk level do not exceed the short position thresholds. This is to avoid a situation where positions that exceed the thresholds at the entity level, but which are not exceeded at the trading desks level are not reported. Not applying the thresholds at the trading desk level ensures that transparency on such positions can still be achieved, while balancing the industry's need for flexibility to report positions reflective of their trading decisions practices.

5.6 To report short positions at the trading desk level, institutional participants have to register and set up separate reporting identities in SPRS for each trading desk. If such institutional participants decide, after due deliberation to change how short positions are aggregated in order to reflect changes in the way trading decisions are made, new reporting identities should be set up for each new level of aggregation.

5.7 While institutional participants may get others to report the short positions on their behalf, they remain fully responsible for the reporting and the accuracy of the reported information thereof.

6 Investors with multiple fund managers which have discretionary mandates

6.1 Similar to an institutional participant with many different trading desks, an investor could also be in a position of having many different independent fund managers managing his funds for him under different, segregated accounts with separate discretionary mandates.

6.2 In such a scenario, the investor could report his short sell orders and aggregate short positions at his level. Alternatively, given that the trading decisions are made by the fund managers independently of him, MAS would allow the investor to report short orders or positions at the fund manager's level. Care must be taken to ensure that orders and positions are not double counted i.e. a short order or position reported by one fund manager should not be reported by the investor or another person.

Reporting of short positions at fund manager level

An investor has two fund managers that each make independent trading decisions:

- Fund manager A has long position of 400 shares
- Fund manager B has short position of 500 shares

At the investor level, the investor should report a short position of 100 shares.

If the investor chooses to report at the fund manager level, fund manager B has to report a short position of 500 shares.

6.3 Where an investor chooses to have his orders or positions reported at the fund manager's level, reporting has to be made on a consistent basis. For example, an investor should not be aggregating at his level in one reporting period, and at the fund manager's level in the next reporting period.

6.4 For the purpose of short position reporting at fund manager level, a fund manager has to report all short positions that it entered into for the investor, even if the short positions at the fund manager level do not exceed the threshold mentioned in paragraph 4.8. This is to avoid a situation where positions that exceed the thresholds at the investor level but which are not exceeded to at the fund manager level are not reported. Not applying the thresholds at the fund manager level ensures that transparency on such positions can still be achieved, while giving investors the flexibility to report positions at their fund managers' level.