These notes refer to the Financial Services Act 2010 (c.28) which received Royal Assent on 8 April 2010

FINANCIAL SERVICES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Short selling

Section 8: Power of FSA to prohibit, or require disclosure of, short selling

New section 131C: Short selling rules: definitions etc

124. This section defines the terms used in section 131B.

125. *Subsection (2)* defines short selling for the purposes of the short selling rules. Short selling will include any case in which a person sells a financial instrument which that person does not own, and will make a profit if the price of that instrument falls before the person has to buy the instrument to deliver it to the buyer or to return to the lender (where the sale was settled with borrowed financial instruments). It will also include any case in which a person enters into a transaction in a different financial instrument to the shorted instrument (whether the first-mentioned financial instrument was in existence before the transaction, or was created as a result of the transaction), where the effect of the transaction entered into is that that person will make a profit if there is a fall in value in the shorted instrument. For example, S may buy an equity put option giving S the right to sell 1,000 shares in ABC plc for £10 a share. If the price of the shares falls to £5, S will be able to buy 1,000 shares in the market for £5,000, exercise the option and sell the same shares for £10,000, making a profit of gross £5,000. Alternatively, S may enter into a contract for difference ("CFD") which provides that S will pay to B the difference between the current value of a financial instrument and its value at the date on which the contract for difference matures if the price increases (if the price falls, B pays the difference to S). The transaction will create a financial instrument (the CFD) and S will have engaged in short selling the financial instrument to which the CFD relates because he will make a profit if the value of the financial instrument falls before that date.

126. *Subsections (3)* and *(4)* define "financial instrument" and "relevant financial instrument". *Subsections (5)* and *(6)* contain supplementary definitions. The definition of "relevant financial instrument" ensures that the FSA may make rules regulating short selling in relation to financial instruments admitted to trading in EEA markets, or which have any other connection to EEA markets which may be specified in the rules, as well as financial instruments admitted to trading in the UK.

127. *Subsection (7)* ensures that where a financial instrument is admitted to trading both on a UK or EEA market and markets elsewhere in the world the FSA may make short selling rules in relation to that instrument on any or all of the markets on which it is admitted to trading. Under *subsection (8)* the same applies where related financial instruments are admitted respectively to trading on an EEA market and a market elsewhere in the world. An instrument will be related for these purposes if the price or value of one instrument depends on the price or value of the other, as would be the case in relation to an equity share and a depositary receipt issued in relation to that share.

128. *Subsection (9)* defines "regulated market". *Subsection (10)* clarifies the meaning of references to a "market" in a particular territory.