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Dear Dilwyn

FSA SHORT SELLING DISCLOSURE REGIME – PRACTICAL CONCERNS

SIFMA and LIBA are writing in response to the FSA launch on 20 June 2008 of a Disclosure Regime for holders of short positions in companies undertaking rights issues. Having now been subject to the Regime for several weeks, our members have a number of practical concerns with it, the most important of which we outline in this letter. Some of these concerns were discussed with you just after the Regime was announced, and you said you would consider them.

We would welcome the opportunity to meet with the FSA as soon as possible to discuss these issues and ways in which they might be addressed to improve the functioning of the Regime. As a matter of prioritisation, we suggest that the FSA should consider such enhancements to the existing Regime before exploring possible extensions to it.

At this time our main practical concerns are:

Scope of the Regime

Our members urge that the Regime be made applicable only to UK issuers which are the primary concern of the FSA. The FSA has excluded shares represented by GDRs from the regime, and it would be very helpful to similarly exclude non-UK shares. The UK has a long history of objecting to the extra-territorial application of other nations' regulations, and the same principle applies in this context. It is difficult to see how the FSA will enforce or should enforce the Regime with respect to trading which takes place in non-UK issuers outside the UK. The exclusion of non-UK shares would immensely simplify and focus the Regime for both the FSA and for those subject to it. We note that some of

our members have had to address the Regime on a global scale which, given the scope provisions in FSMA 118A and the potential consequences of non-compliance and cross-border systems issues is highly problematic.

List of Companies Undertaking Rights Issues Covered by Regime:

The FSA has indicated that it is not prepared to publish and update a list of issuers covered by the Regime on the grounds that those who take out a significant short position in a company will have an interest in tracking what happens to that company. We would contend that most investors may either a) have taken out positions prior to the rights period, or b) hold investments via an agent and will rely on that agent to provide ongoing information on the investments made. Agents will typically only advise client investors of a rights issue if they have a position in the security at the time of announcement. Thus, if an investor takes out a position after the announcement of the rights issue, the agent will not send out a notification to that investor.

Further, many of our members centrally monitor their house positions to ensure compliance with regulatory obligations. In these circumstances, monitoring staff do not have an intrinisic interest in monitoring the company announcements of every in-scope issuer in which their firm has or could have a short position. Rather they will rely on reference data, currently not customised for the purposes of short selling disclosures, to alert them to those issuers undertaking rights issues in order to focus the firm's monitoring on these stocks.

Practical experience has revealed much uncertainty as to which companies are in and outside the scope of the Regime and, we suspect, several erroneous disclosures. Publishing and updating a single, easily accessible and definitive list of companies would be consistent with the practice of the Takeover Panel (who, as you are aware, maintain a list of UK companies which are under offer) and remove a great deal of the (much reported) ambiguity around what needs to be disclosed. We note that the task of publishing and updating a list would be easier, if non-UK issuers were excluded as requested above. A single central list would enable the FSA to unambiguously focus on the stocks in which it is most interested and also to streamline resource allocation for both regulated firms and end-users. We would finally argue that the super-equivalent nature of the Regime and the classification of any infringement as market abuse highlights the importance of the FSA taking responsibility for publishing the list of rights issuers.

International Context of Reporting Deadline:

The reporting deadline of 15:30 GMT on the business day following the business day on which the short position was taken is creating significant challenges for investors located outside the GMT and continental European time zones. The difference in time zone and business hours constrains the effective time available to gather and communicate the information necessary for the disclosure. Given the remaining uncertainties of the Regime and the complexity of calculating the disclosure obligations, this effective shortening of an already short deadline is proving very burdensome for international market participants. On this basis we ask the FSA to extend the disclosure deadline to 15:30 GMT on trading day plus two trading days for the disclosure of positions held by investors based outside the GMT and continental European time zones.

Position of Underwriters:

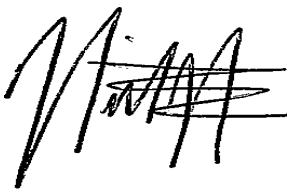
Underwriters and sub-underwriters may take short positions in the underwritten stock as part of a hedging strategy. The disclosure of any such short positions on a gross basis could undermine the underwriting function as it may be misinterpreted as a lack of faith in the issuing company. It is our understanding of the rules that authorised market-makers acting as underwriters (as they have a long economic position equivalent to a short put option) are permitted to net their long economic position (under their underwriting agreement) with their short equity position (in the underlying stock) to arrive at a net position which, if equal to or greater than the threshold, would be subject to disclosure.

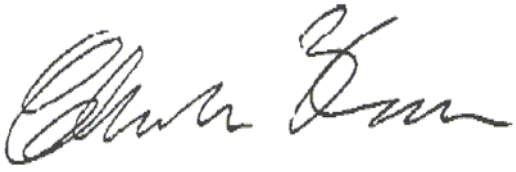
Nevertheless we understand that there has been a certain amount of confusion on this issue caused in part by the FSA stating (see Short Selling Instrument 2008 FAQ #9) that long positions in the rights cannot be netted against short positions. The confusion as to the disclosure obligations of underwriters may also have arisen from discussions at our 16 June meeting. As you will recall, there was a discussion with you regarding the similarity of the function of underwriting and sub-underwriting in bringing securities to investors with the client-facing role of market-makers. You indicated that if an underwriter met the definition of a market-maker, its short position for hedge positions would be disclosable. The problem is that conflicting advice has been given by some legal firms.

We consider that it would be beneficial for the FSA to confirm our understanding of the disclosure obligations of underwriters and sub-underwriters to the broader market to dispel confusion on this issue. Otherwise there is the potential that the Regime will undermine the underwriting process.

We look forward to engaging with the FSA on this important topic and remain at your disposal with respect to arranging meetings with our members to further discuss this matter.

Yours sincerely





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