



By e-mail cp09_15@fsa.gov.uk

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Financial Services Authority
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15 June 2009

Dear Stephen

Re: CP 09/15 Extension of the Short Selling Disclosure Obligation

This is a joint response to the CP 09/15: Extension of the Short Selling Disclosure Obligation (the CP) and is being made on behalf of LIBA, SIFMA, ISDA and ISLA. Information on each of the respondents is provided in the attached Annex .

Questions & Answers

Q1: Should the Disclosure Obligation be extended?

Answer:

We do not object to the extension of the short selling disclosure regime for UK financial securities on the basis that the FSA is striving to reach a more consistent international regulatory framework for short selling through CESR and IOSCO. We do not hereby endorse the regime as is in the UK as optimal or proportionate. We note that the CP indicates that the current regime could simply be rescinded.

We remain concerned that the short selling disclosure regulation is formulated under the market abuse regime. We consider that it should be part of the transparency disclosure rules as are disclosure rules governing significant holdings. Our view is that the regulatory purpose which is most relevant to the short selling disclosure regime is the regulator's responsibility to maintain fair and orderly markets.

We continue to be concerned regarding the evidentiary provision (MAR 1.9.2CE) that any failure to provide adequate ongoing disclosure of a disclosable short position will be considered market abuse by the FSA. We consider this to be an arbitrary provision which takes no account of the intent of the party involved or whether any other actions are involved showing an abusive purpose.

It is relevant that a failure to comply with the duty to disclose a significant long position is not treated in the same way by the FSA.

We note that some members report that many clients are expressing unhappiness with the disclosure requirements which they consider to be unfair and intrusive without any material benefit to the market in general.

Q2: Do you agree that the extension should be without time limit?

Our members would prefer that the extension of the regime be for a stated period which in this case would seem to be suggested by footnote 5 i.e. December 31, 2009. This would recognise the temporary status of the regime and the ongoing international efforts of the FSA to establish a consistent regime internationally.

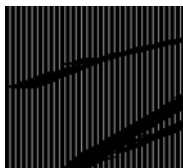
Q3: What are your views on the costs and benefits of the proposed extension of the Disclosure Obligation?

Answer:

There is a continuing need at many firms for manual handling of data to meet the varying short selling regulatory standards of Member States. This is costly. Also, the .25% trigger is too low. We would prefer a .5% initial trigger which would reduce costs and be more meaningful.

We appreciate this opportunity to comment on the extension proposal. We are very interested in working with you to achieve a proportionate and consistent international regulatory regime for short selling.

Yours sincerely



Handwritten signature of William Ferrari.

Handwritten signature of Christian Krohn.

Handwritten signature of Richard Metcalfe.

Handwritten signature of David Rule.

William Ferrari
Director
LIBA

Christian Krohn
Director – Regulatory
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Richard Metcalfe
ISDA

David Rule
Chief Executive
ISLA

About our associations:

LIBA is the principal trade association in the United Kingdom for firms which are active in the investment banking and securities industry. The Association represents its members on both domestic and international aspects of this business, and promotes their views to the authorities in the United Kingdom, the European Union, and elsewhere. More information LIBA is available at www.liba.org.uk

SIFMA brings together the shared interests of more than 650 securities firms, banks, investors, and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in London, New York, Washington DC, and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. More information about SIFMA is available at www.sifma.org.

ISDA, which represents participants in the privately negotiated derivatives industry, is among the world's largest global financial trade associations as measured by number of member firms. ISDA was chartered in 1985, and today has over 800 member institutions from 56 countries on six continents. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Information about ISDA and its activities is available on the Association's web site: www.isda.org

ISLA represents the common interests of nearly one hundred borrowers and lenders of securities in Europe, Asia and the Middle East. While based in London, it has members in more than twenty countries. More information is available at www.isla.co.uk.