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Mr Dilwyn Griffiths
Head of Market Monitoring
FSA
25 The North Colonnade
Canary Wharf
London E145H5

3 July 2008

Dear Dilwyn

FSA Short-Selling Instrument

We are writing to you to register our concern about aspects of the recent FSA action to require disclosure of 'significant' short positions in stocks admitted to trading on prescribed markets, the issuers of which are undertaking rights issues.

We would in particular like to register our surprise at the process used in introducing this Instrument. We note that FSA FAQs have addressed a number of aspects of the Instrument on which we felt that there remained considerable ambiguity, and we welcome the belated introduction of this clarity. However we feel that this uncertainty could have been avoided if optimum regulatory procedures had been made.

Process

Many of the concerns we hold about the process used in introducing this Instrument have been detailed in the letter by AIMA of 18 June 2008. We would in particular highlight:

- Our reservations about the short timeframe between introduction and implementation of the new rules (5 days) which we feel places a challenging compliance burden on firms whose shareholdings are caught by the quantitative limits set out;
- Further to this, we note that no cost-benefit analysis has been published.
- While we understand the keenness of the FSA to stabilize financial markets at this time of difficulty, we feel that a more open and transparent dialogue with the industry could have effected

a greater degree of industry understanding and support for the proposals. There is no certainty within industry on what evidential-basis this Instrument has been introduced (no communication has been forthcoming concerning the outcome of the investigation around shortselling of HBOS shares for example).

Will the Instrument help in identifying abusive behaviour?

It is not necessarily clear to us (because of the concerns expressed above) that this Instrument will of itself be able to identify abusive behaviour. One of our members highlights the case of two firms who hold short positions, one of which has held the short position for some time before the rights issue, and the other of which takes the short position with abusive intentions. How will the FSA be able to isolate abusive behaviour in cases such as these?

Ambiguity in the implementing details

We shared many of the concerns expressed in the AIMA letter as to the ambiguity that seemed to remain on how the Instrument should be applied, particularly as regards combinations of financial instruments. We note that many of the issues on which there is a lack of clarity have been addressed in the FSA FAQ documents. We support the calculation of positions on a net basis, and welcome the recognition that the degree of exposure afforded by an option will be more accurately reflected by the 'delta' than the notional.

Nevertheless we urge the FSA to remain in dialogue with industry to iron out any remaining potential confusion.

Yours sincerely,



George Handjinicolaou
Deputy CEO and Regional Director, Europe, Middle East, and Africa