

8th May 2009

Messrs Stephen Sie and Don Groves
Market Monitoring
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Sent by email: dp09_01@fsa.gov.uk

Dear Messrs Sie and Groves

Discussion Paper: Short selling

Richard Davies Investor Relations (RD:IR) would like to thank the Financial Services Authority (FSA) for the opportunity to respond to its discussion paper on short selling.

RD:IR welcomes the discussion paper and supports the proposal to extend the current disclosure regime in place for financial stocks to all issuing companies incorporated in the United Kingdom.

Our responses to the specific questions addressed in the discussion paper are as follows:

1. What are your views on the costs and benefits of a blanket short selling ban? Where possible please quantify.

RD:IR agrees with the FSA that short selling constitutes a legitimate investment technique in normal market conditions.

2. Do you agree that there should not be a ban on all forms of short selling?

Yes we agree that there should not be a ban on all forms of short selling. We note that the FSA has reserved the right to reintroduce a prohibition in extreme market conditions, and support this stance.

3. Do you think any further measures are necessary to deal with naked short selling. If so, what is required and why?

We note that the FSA is reviewing settlement issues following the introduction of the Markets in Financial Instruments Directive. It would seem sensible to defer any decision on whether further measures are necessary to deal with naked short selling until this review has been undertaken.

richard davies : investor relations

Marlborough Court 14-18 Holborn London EC1N 2LE

t +44 20 7492 0500 *f* +44 20 7492 0566 *e* welcome@rdir.com *w* rdir.com

4. Should short selling of financial sector stocks be banned permanently?

No, there are no strong arguments to support such a ban under normal market conditions.

5. Do you agree that, subject to having a satisfactory disclosure regime, we should not ban short selling of the stocks of companies engaging in rights issues?

Yes. Again we welcome the FSA's view that an emergency prohibition may be imposed in extreme market conditions.

6. Do you agree that we should not ban short selling by underwriters of rights issues (of the shares they are underwriting for the duration of the underwriting process)?

In line with the UK Investor Relations Society, we believe the FSA guidance regarding rights issues, which we understand will be published in due course, could recommend that issuing companies could usefully consider whether certain restrictions on short-selling are written into agreements it has with its advisors and underwriters to require underwriters and sub-underwriters not to engage in short selling of a company's shares to hedge their underwriting obligations during a rights issue period.

7. Should we intervene to ban short selling on an emergency basis where necessary eg to combat market abuse and /or to maintain orderly markets?

Yes, we are very supportive of this view.

8. Do you agree that no additional circuit-breakers should be introduced?

Yes.

9. Do you agree that we should not introduce a tick rule?

Yes.

10. Are there any other direct constraints on short selling that you think ought to be considered? If so, please provide information regarding their costs and benefits?

No.

11. Do you agree, in principle, that the benefits of transparency around short selling outweigh the costs?

Yes, we agree that enhanced transparency in this area would contribute to orderly markets and help detect short selling that is being used to commit market abuse.

12. If disclosure obligations are introduced, do you agree that those obligations should apply to all equities and their related instruments rather than be limited to certain sectors or companies?

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We agree with the FSA that limiting disclosure to certain sectors or companies is likely to lead to stocks being shorted as a proxy for others. The potential for market abuse through short selling exists in all stocks and, therefore, we agree that the disclosure should apply to all equities and their related instruments.

13. Do you agree that the disclosure obligations should be limited to the stocks and related instruments of UK issuers?

Yes. We welcome the FSA's involvement with the working groups of the Committee of European Securities Regulators and the International Organisation of Securities Commissions to implement any enhanced transparency regimes as widely as possible.

14. Do you agree that the costs of introducing a regime based on disclosure of aggregate short positions would outweigh the benefits?

Yes.

15. Do you agree that benefits of public disclosure of significant short positions outweigh the costs?

We agree that the benefits of public disclosure of significant short positions outweigh the costs.

In line with the IR Society, we believe it may also be beneficial to review the legislation in the 2006 Companies Act in order for disclosures of both short and long derivative positions to be brought under the s793 provisions in the Act. This would enable companies to understand in more detail institutional investment flows in their business.

16. Do you agree that an individual significant short position disclosure regime should be on a net basis?

Yes.

17. Do you agree that 0.50% would be an appropriate threshold for triggering disclosures under a net short position regime? If not, what alternative would you propose and what are your reasons for this figure?

We agree that the 0.50% threshold would be appropriate on an initial basis but that this should be reviewed following a trial period.

18. Do you agree that a banded approach to disclosure should apply in conjunction with a minimum threshold? If so, do you agree that such a banded approach should be based on bands of 0.10% of a company's issued share capital?

Yes, we agree that a banded approach to disclosure should apply in conjunction with a minimum threshold. Bands of 0.10% appear reasonable, but again, these could be reviewed following a trial period.

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19. If long term disclosure obligations are introduced, do you agree that market makers should be exempt from those obligations when they are acting in the capacity of market maker? Do you also agree that this should be an absolute exemption?

Yes we agree market makers should be exempt.

20. Do you agree that maintaining the current disclosure obligation of 0.25% of a company's issued share capital for rights issue situations is appropriate?

Yes. Companies undergoing rights issues are more vulnerable to abusive short selling and, therefore, a more onerous disclosure regime is appropriate.

21. Do you agree that the ongoing disclosure obligations should be the same as the general regime?

Yes provided that bands of 0.10% are applied. Should a more lenient band be applied to the general regime we would argue strongly for the more onerous banding to apply to companies undergoing rights issues.

22. Do you consider that any further measures are necessary in respect of CDS?

No we do not consider further measures are necessary in respect of credit default swaps.

Should you have any queries or would like to discuss this response further, please do not hesitate to get in touch.

With kind regards

Yours sincerely



Richard Davies MIRS MCIPR
Managing Director, Richard Davies Investor Relations Limited
Chairman Elect, The Investor Relations Society

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About RD:IR

RD:IR is an independent investor relations consultancy that offers investor relations products and services across four key business areas:

IR InTouch

IR InTouch, our proprietary online investor relations service, combines rigorous shareholder analysis, powerful targeting and profiling, and tailored investor relations contact management.

IR InTouch +

IR InTouch + provides consultancy services based on the firm foundation of *IR InTouch*. Our experienced team provides investor relations support services in a wide range of areas including roadshow management and sentiment surveys.

ProxyTracker

ProxyTracker offers public companies and their advisors proxy and corporate action support services.

Market Enquire

Market Enquire: our financial market research team carries out quantitative and qualitative research projects across a wide range of sectors and business areas in the global capital markets.

RD:IR is retained by over 520 UK and international public companies and acts for a wide range of financial intermediaries and organisations including stockbrokers, financial PR agencies, investment banks and a number of leading financial newspapers and magazines.

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