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6 February 2012

Mr Andrew Broughton  
Markets Division  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

By email: cp11\_27@fsa.gov.uk

Dear Mr Broughton,

**CLLS Regulatory Law Committee comments on CP11/27 – PDMR transactions:  
guidance on the role of brokers**

We write in response to the FSA's proposals contained in chapter 6 of CP11/27.

The City of London Law Society ("**CLLS**") represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world.

This paper has been prepared by the CLLS Regulatory Law Committee (the "**Committee**"). Members of the Committee advise a wide range of firms in the financial markets including banks, brokers, investment advisers, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure providers such as the operators of trading, clearing and settlement systems.

*General*

We support the rationale underpinning the proposed exemption from the market abuse (improper disclosure) offence – namely, enabling the divestiture of illiquid stock that would otherwise be unsaleable.

However we are concerned that the FSA is not proposing any form of corresponding exemption for prospective purchasers of such stock. Without such a corresponding buy-side exemption, any well-advised buy-side institution may well be reluctant to acquire the stock being offered, for fear of falling foul of the market abuse (insider dealing) offence. This would defeat the very object of the FSA's proposed exemption.

In practice, it is likely to be difficult, if not impossible, for any buy-side firm to be able to demonstrate that its acquisition of the stock was not “on the basis” of the PDMR information divulged by the broker, pursuant to (new) MAR 1.4.4A – as indicated in the second sentence of paragraph 6.21 of the CP. Indeed, in many cases, the purchase decision will – as a matter of fact - be inextricably linked to the disclosure by the broker that the seller is a PDMR.

Put another way, without a form of corresponding ‘safe harbour’ for the buy-side, the FSA’s (well-intentioned) proposal may well prove of no use in practice.

Accordingly, we would strongly urge FSA to introduce into MAR 1.3 a corresponding ‘safe harbour’ for buy-side firms to whom an offer of such illiquid stock is being made by a broker, in accordance with MAR 1.4.4A.

#### *MAR 1.4.4A*

We turn now to the proposed new provisions in MAR 1.4.4A, designed to implement the sell-side illiquid stock exemption. As drafted there is a real risk that the exemption will be illusory for the reasons explained below.

We consider that sub-paragraph (2) should be qualified by the insertion of the phrase “within the required timeframe and in the desired manner” at the end. Otherwise, a literal interpretation could render the exemption effectively useless – given that it should always be possible (in theory, at least) to complete the envisaged transaction, albeit perhaps over a protracted and prolonged time period (but, crucially, not in the manner and within the timeframe desired by the seller).

We also suggest that sub-paragraph (3) (disorderly market) is deleted, it does not add to sub-paragraph (2), and is potentially confusing. (In addition there could never be certainty that a disorderly market would ensue, there could only be a reasonable view that there was a material risk of this).

In addition, given the views expressed by the FSA on the position of the buyer, we think that the guidance also needs to cover the situation where the buyer would realise that the seller is a PDMR, because a PDMR could be the only shareholder with that number of shares to sell. It is not clear what the position is in these circumstances, the exemption would not seem to apply.

We would be delighted to discuss any of our suggestions or observations with you. You may contact me by telephone on +44 (0) 20 7295 3233 or by email at [margaret.chamberlain@traverssmith.com](mailto:margaret.chamberlain@traverssmith.com).

Yours sincerely



**Margaret Chamberlain**  
Chair, Regulatory Law Committee  
CLLS

**Enc.**

**THE CITY OF LONDON LAW SOCIETY  
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