CFA INSTITUTE | Centre for Financial Market Integrity

Maria Velentza
European Commission
Directorate-General Internal Market and Services
Unit G3 – Securities Markets
B - 1049 Bruxelles/Brussels
Belgium

Brussels, 10th June 2009

Dear Mrs Velentza,

Call for evidence: Review of the Market Abuse Directive

The CFA Institute Centre for Financial Market Integrity (the "Centre") is pleased to comment on the Commission's call for evidence concerning the review of the Market Abuse Directive (Directive 2003/6/EC) (the "Consultation"). The Centre, through its members' experience in international markets and different investment disciplines, represents the interests of investors and investment professionals to standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis, investment management and the efficiency of global financial markets. CFA has more than 12,000 investment professionals as members throughout the European Union, spread across all 27 member states.

Our response to the Consultation reflects the collaborative efforts of CFA Institute Centre and a working group of investment professionals, drawn from our membership (collectively, the "Working Group"). Representatives of the Working Group[1] span several EU Member States. Consequently, the views expressed herein broadly capture the opinions of our membership and reflect a cross-section of industry expertise. The contribution of the Group reflects the importance CFA Institute Centre places on this initiative.

EXECUTIVE SUMMARY

The Consultation forms part of the broader "*better regulation*" objective, which aims at reducing enterprises' administrative burden. Consequently simplifications for the issuers are considered. The Consultation also seeks to address some of the market 'shortcomings' observed in the current financial crisis.

The Centre supports the Consultation's objective to abolish unnecessary administrative burdens to issuers. The Centre believes that the benefits of disclosure

[1] Members of the Group, with affiliated CFA societies, are set out at the bottom of this letter.

Charlottesville Hong Kong London New York Brussels
Square De Meeûs 38/40
1000 Brussels
Belgium
+32 (0)2 401 68 28 tel
+32 (0)2 401 68 18 fax
info@cfainstitute.org
www.cfainstitute.org

Centre for Financial Market Integrity

requirements in terms of increased market efficiency well exceed the costs it imposes on issuers.

The Consultation addresses the following broad issues: the scope of the MAD, inside information and market manipulation. In addition, the issue of short selling is also addressed.

The Centre takes the view that the MAD should be extended to cover also MTFs and that the MAD definition of securities should be aligned with MiFID.

The Centre is very concerned by the consideration of proposals that increase the opportunity for delayed disclosure of material non-public information by an issuer, namely financial institutions in need of emergency Central Bank support. Such a delay could not be kept confidential and would be prejudicial to the interests of investors, and savers. The circumstances that lead to the events where emergency liquidity support is required are best addressed under macro prudential supervision, rather than through reducing the transparency of the markets.

Moreover, even though some further guidance might be helpful, we believe that the MAD must continue to rely on a broad definition of both inside information and market manipulation.

Short selling is a legitimate investing activity. Regarding the special case of naked short selling, the Centre advocates a complete ban.

Overall, we believe that the proposals set out herein will help to produce a more coherent market abuse framework, and will add value to its provisions.

We attach our response that addresses the questions of the Consultation. Please do not hesitate to contact us, should you wish to discuss any of the points raised.

Yours faithfully,

Charles Cronin, CFA
Head, CFA Institute Centre,
Europe, Middle East and Africa
+44 (0)20 7531 0762
charles.cronin@cfainstitute.org

Martin Sjöberg
Manager, European Affairs
+32 (2) 401 68 28
martin.sjoberg@cfainstitute.org

Register of Interest Representatives ID # 89854211497-57

Centre for Financial Market Integrity

Members of the MAD Working Group:

Angelo Trementozzi, CFA	–	Italian CFA Society
Borja Durán, CFA	-	Spanish CFA Society
Michael Kyrou, CFA	–	CFA Society of Cyprus
Mikko Niskanen, CFA	-	CFA Society of Finland
Kerstin Dodel, CFA	-	German CFA Society

The CFA Institute Centre[2] is part of CFA Institute[3]. With headquarters in Charlottesville, VA, and regional offices in New York, Hong Kong, London and Brussels, CFA Institute is a global, not-for-profit professional association with 95,000 investment analysts, portfolio managers, investment advisors, and other investment professionals in 131 countries, of whom nearly 87,000 are holders of the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 136 member societies in 57 countries and territories.

Our responses to the Consultation's questions are set out below.

The Scope of the MAD

2.1.1. Only regulated markets? (Articles 1(3) and 9 of Directive 2003/6/EC)

> The services of the European Commission recognise that there are divergent arguments as to the extension of the scope of MAD to "non-regulated markets". However, bearing in mind the need to secure integrity of markets and to ensure a level playing field between regulated markets and alternative trading platforms it is worth examining the possibility of extending the MAD scope to MTFs.

Question: Do you consider that the scope of the MAD should go beyond regulated markets? In particular, should it be extended to cover MTFs?

The present scope of MAD covers all securities traded on a regulated market regardless of whether the actual transaction took place on that market or not. Hence, the proposed change would only affect securities, which are traded only on an MTF.

The current regulation makes it difficult to keep track of which securities are covered by the MAD and which are not. This is especially true for smaller retail investors,

[2] The CFA Institute Centre develops, promulgates, and maintains the highest ethical standards for the investment community, including the CFA Institute Code of Ethics and Standards of Professional Conduct, Global Investment Performance Standards ("GIPS®"), and the Asset Manager Code of Professional Conduct ("AMC"). It represents the views of investment professionals and investors before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and the transparency and integrity of global financial markets.

[3] CFA Institute is best known for developing and administrating the Chartered Financial Analyst curriculum and examinations and issuing the CFA Charter.

which might invest in non-covered securities traded side-by-side with well-known securities on an MTF not being aware of this lack of market abuse protection.

This is a regulatory gap which needs to be filled. Abusive market behaviour is unacceptable irrespective of where it takes place and investors should be offered the same level of protection wherever the trade takes place. Consequently, the Centre supports the extension of the MAD to also cover MTFs.

2.1.2. What kind of financial instruments should be covered by the MAD, especially in comparison with the MiFID? (Article 1(3) of Directive 2003/6/EC)

In order to clarify the scope of application of the MAD in relation to the various types of financial instruments currently traded on the EU financial markets, the definition of financial instruments in the MAD could be aligned with the definition of financial instruments provided for in MiFID.

Questions: Do you agree with an alignment of the MAD definition of financial instrument to the definition for the same concept provided for in MiFID? Do you think it could be useful to explain in more detail in the MAD what is meant by a financial instrument "whose value depends on another financial instrument" or to list asset classes, such as CFDs and CDS, which belong to this category?

Different definitions in different directives cause confusion. Not only does it create an unnecessary burden for firms, it also jeopardizes investor protection.

The definition of financial instruments in MiFID is broader and more up to date. Hence, the Centre supports the alignment of the MAD definition of financial instruments with that of MiFID. This will reduce the uncertainty and augment investors' protection.

It is important that derivatives continue to be broadly defined. Financial innovation would soon make any list of detailed description of various derivatives outdated. Moreover, it would encourage financial innovation with the sole purpose to circumvent the regulation in question. Consequently, the Centre supports the broad and open ended definition in MiFID and opposes any attempt to define in detail what is meant by a derivative. CFDs and CDS should be added to the list but only if the MiFID's all-encompassing "…and any other derivative contracts relating to securities…" is preserved.

2.1.3. The specific case of commodity derivatives markets (Article 1(1) of Directive 2003/6/EC)

A tailor-made market abuse framework for physical markets in a separate piece of legislation (not in financial services regulation) and an interface between regulators concerned could be a possible way forward.

Question: Do you see a need for introduction of a market abuse framework for physical markets?

For energy and physical markets to be fair and efficient, a market abuse framework is paramount. We reiterate our support of a separate tailor-made regime for energy markets which we expressed in our response to CESR and ERGEG's consultation concerning the third energy package question F.20[4].

Inside information

2.2.1. Definition of inside information: the general definition (Article 1(1) of Directive 2003/6/EC and Article 1 of Directive 2003/124/EC) and the particular definition for commodity derivatives

In this context, there does not seem to be a need to revise the concepts used to define inside information for MAD purposes.

Question: Do you share this view as far as insider dealing prohibition is concerned? (see also next point for disclosure of inside information). If not, which concepts would you advise to modify and how?

According to CFA Institute's *Standards of Practice Handbook*[5], information is "material" if *its disclosure would likely have an impact on the price of a security or if reasonable investors would want to know the information before making an investment decision*. If such information is not available to the public, it is to be considered to be material non-public information. Until that information becomes public it is a criminal or civil offence for recipients of that information to act on it and as an investor you should not act to deal in securities affected by that knowledge or indeed, pass on that information to others.[6]

Whether the information is unique and substantially different from already publically available information, it is of importance when determining if information is material.

---

[4] http://www.cfainstitute.org/centre/topics/comment/2008/pdf/080829.pdf

[5] http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2005.n3.4000

[6] See also our response to HM Treasury, April 2008: "We see benefits from the broader definition of insider information through application of the 'relevant information not generally available' (RINGA) concept as it relates to material non-public information and the lower standard of proof through civil as opposed criminal action. We believe that the individual or group 'behaviour' and 'inaction' features provide greater coverage of market abuse than do the concise action and dealing in securities provisions of MAD. The provision that covers insider behaviour, while not requiring proof of how the information was obtained, but need only to demonstrate that it was RINGA, covers the problem of convicting individuals within an insider ring. http://www.cfainstitute.org/centre/topics/comment/2008/pdf/hmt_market_abuse.pdf

Furthermore, the information must be reasonably reliable. If the effect of the information on prices is unclear, the information is less likely to be material.

The MAD definition of inside information is as follows: *information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.*

Hence the MAD definition of inside information agrees with that of CFA Institute as outlined in our *Standards of Practice Handbook*. It is also reasonably broad, which is a necessity considering that it would be virtually impossible to specify all different forms that inside information might take. Instead it functions as a test for whether a piece of information is to be considered material and non-public. As such it functions well. Consequently, the Centre does not see any need to revise the MAD definition of inside information.

The current MAD provisions on this issue [inside information for commodity derivatives] may not offer sufficient certainty. Alignment of the definition of inside information for commodity derivatives with the general definition given by the MAD could be considered. However, if new obligations on public disclosure in the physical commodities markets were tailored in the short to medium term as a consequence of the Third Energy Package, we may need to reassess whether maintenance of the status quo is more appropriate.

Question: Do you support an alignment of the inside information definition for commodity derivatives with the general definition of the directive?

The Centre has no comment on this.

2.2.2. Dissemination of inside information and deferred disclosure mechanism (Article 6 of Directive 2003/6/EC and Article 3 of Directive 2003/124/EC)

2.2.2.1 General obligation of disclosure of inside information

At this stage, no changes in the definition of inside information for disclosure purposes would seem to be justified.

Question: Do you consider that any changes to the definition of inside information for disclosure purposes is necessary?

Timeliness of public disclosure is paramount for markets to be fair and efficient. Delaying public disclosure creates frictions in the price formation process and extends the scope for insider dealing. Consequently, it is not consistent with a high level of investor protection. The Centre therefore supports the current broad definition of

insider information for disclosure purpose. We oppose any changes in this respect that could jeopardize the efficiency and fairness of capital markets and investor protection.

It may be necessary to revisit the mechanism for deferred disclosure of inside information in order to ensure (i) that the conditions for the use of this possibility are sufficiently precise and (ii) that when the viability of an issuer is at stake, they are not unduly stringent. It may be worth examining whether exemptions to the obligation of disclosure of inside information should be broadened and should exclude financial stability measures from such an obligation. Effecting changes or providing clarifications in this area may imply changes to Level 1 and/or Level 2 measures.

Questions: Do you agree that the described deficiencies of the deferred disclosure mechanism need to be addressed, possibly by way of amendments to the MAD framework? Do you consider that Level 3 guidance could be sufficient?

Do you agree that the issuer may be exempted from disclosing inside information in situations when that information concerns emergency measures being prepared in case the issuer's financial stability is endangered?

What are other deficiencies in this area that raise major interpretation / application difficulties? What is the best way to address them?

We are deeply concerned by any attempt to increase the opportunity for issuers to delay disclosure of material information. If a financial institution is in need of liquidity support from a central bank it obviously faces difficulties on the interbank market. Financial institutions active in the credit markets will be aware of the fact that it is facing illiquidity problems. As a result, deferring public disclosure would disadvantage shareholders and depositors to the benefit of large integrated financial institutions. Such a measure would damage the fairness and efficiency of capital markets.[7]

Moreover, since it most likely already known that the institution in point is under financial distress, the information that it receives liquidity support from a central bank might actually prevent its stock from collapsing. Hence, deferred disclosure, under these circumstances would be counter-productive.

The scenario described in the Consultation paper of a failing financial institution is a function of failed macro-prudential supervision. As such we believe that measures to stiffen the macro-prudential architecture are more appropriate. We cannot support any measure that reduces market transparency.

---

[7] See our response to FSA's consultation on disclosure of liquidity support.
https://www.cfainstitute.org/centre/topics/comment/2008/pdf/080922.pdf

In our view, extending the provisions for deferred disclosure to financial institutions receiving liquidity support would mean putting the interest of the issuer above the interest of the market and the individual investor. For that reason, the Centre opposes any proposal in this direction.

We reiterate that timely information is vital to fair and efficient markets. The general interest of individual issuers should not be above the integrity of financial markets and the collective interest of investors.

2.2.2.2 Disclosure duty in commodity derivatives markets

Consideration should be given to reviewing the obligation to disseminate inside information for commodity derivatives issuers (e.g. electricity and gas derivatives).

Question: Do you agree with this approach? Can you identify cases where a modification or deletion of the obligation may be undesirable for market integrity?

Even though we promote greater transparency we acknowledge that commodity issuers are as a rule not in the possession of inside information. The proposed review therefore seems plausible.

2.2.3. Prohibition of insider dealing (Articles 2, 3 and 4 of Directive 2003/6/EC)

This matter has been recently brought to the attention of the European Court of Justice (ECJ), in the context of a preliminary ruling34 requested by a court in Belgium. At this stage, there is merit in considering the ECJ preliminary ruling before the services of the European Commission envisage measures that would seek to clarify this apparent divergence.

Question: Would you support this approach?

Trading when in position of insider information should always be avoided. CFA Institute's Standards of Professional Conduct state that possession of material inside information imposes an automatic ban on trading, even if the decision to trade was made prior to and independent of the receipt of the information. Hence, we support the first stricter approach taken by some Member States. An investor who receives material nonpublic information should call upon the issuer to disclose the information and should abstain from trading until after the information is in the market.

The second approach is unsustainable for a number of reasons. It allows trading when the decision was taken prior to the receipt of insider information. The inside information will nonetheless work as a catalyst to trade.

Furthermore, under the second approach there is too much risk of insider trading creating research or a back-dated paper trail to make it look like the decision had already been made before receiving the nonpublic material information.

For markets to be efficient it is important that all investors are on a level playing field. Even the perception that someone has an advantage from insider information is enough to harm this efficiency.

2.2.4 Three new tools to help to detect suspicious transactions
2.2.4.1 Insider lists (Article 6(3) of Directive 2003/6/EC and Article 5 of Directive 2004/72/EC)

The rules on insider lists may need to be re-examined in order to address concerns regarding the balance between their efficiency and the burden they entail for the entities obliged to produce them. Due consideration needs to be given to problems with legal certainty, consistency at EU level or workability of the insider lists' requirement in specific circumstances.

Question: Do you consider that the obligations to draw up lists of insiders are proportionate?

Insider lists are an important tool to fight insider dealing and thus to uphold the integrity of the financial markets. The benefits of constructing insider lists coming in the form of enhanced market integrity and therefore investor confidence outweigh their costs. With the right use of modern information technology, creating and updating of insider lists should not be too cumbersome. Consequently we consider the obligation to draw up insider lists proportionate.

However, we believe there is a need for more clarification regarding who should be included on the insider list. Broadly, only those who reasonably can be expected to possess insider information should be included. Further CESR guidance on this matter is desirable.

2.2.4.2 Transaction reporting by managers and closely associated persons and subsequent disclosure (Article 6(4) of Directive 2003/6/EC and Article 6 of Directive 2004/72/EC)

It may be necessary to reassess this measure and consider whether it provides for sufficient legal certainty.

Question: Do you see a need for a regulatory action in the above areas? Would you suggest further improvements?

We agree with the European Commission that the reporting duty is an important element in the MAD framework. As for insider lists, transaction reporting benefits outweigh their perceived burden, as noted above. From this perspective, we see no reason for regulatory action.

We see no reason to raise the 5,000 Euros threshold, either. Relative to the potential increased cost of capital for European companies if investors were to lose confidence in the integrity of markets, 5,000 Euros is a very low threshold. Moreover, modern information technology makes it possible to gather information about many small transactions and disclose them to regulators and to the public at a very small cost.

There may be scope for further clarification on at what level of detail information should be disclosed to the general public as compared to the competent authority. It should, however, be done with caution so as to not withhold material information from investors.

2.2.4.3 Reporting of suspicious transactions (Article 6(9) of Directive 2003/6/EC and Article 7(11) of Directive 2004/72/EC)

The advantages of this measure seem to largely outweigh any regulatory burden. However, level 1 or 2 changes could still be envisaged in order to enhance the efficiency of the reporting mechanism.

Question: Do you agree that rules on suspicious transactions reporting do not require modifications?

Detailed criteria is valuable for determining suspicious transaction. For this purpose, CESR has created level 3 guidance. Also, we have previously outlined the following approach to recognising a suspicious order in our response to CESR's consultation concerning its third set of guidance[8].

> *In the context of a highly competitive market for financial services, a suspicious order makes itself apparent by being counter-intuitive to competitive behaviour amongst market professionals.*

We cannot see any justification for changes on level 1 or 2. To the extent further clarification is still needed it can be achieved through further level 3 guidance.

2.2.5. The competent authorities' right of access to telephone and existing data traffic records (Article 12 of Directive 2003/6/EC)

It may be necessary to amend the MAD and/or the e-privacy Directive, in order to remove any uncertainties on the rights of the competent authorities to require this data. Article 12(2)(d) of Directive 2003/6/EC could clearly state that the power of competent authorities to require existing telephone and data traffic records in the course of their proceedings against market abuse are not limited by confidentiality restraints or other limitations on entities possessing such records that may stem from the e-privacy Directive.

[8] http://www.cfainstitute.org/centre/topics/comment/2008/pdf/080814.pdf

Question: Do you consider that an amendment of the MAD is necessary?

In many insider trials, telephone and data traffic records have proven to be crucial for reaching a verdict of guilty. Therefore, if the e-privacy directive were to limit the competent authorities' access to such recordings it would be most unfortunate.

Brokers, dealers and others, whose phone calls and data traffic are recorded, are well aware of this taking place. These are phone calls and emails for professional purposes that competent authorities should have legal authority to obtain.

Market Manipulation

2.3.1. Definition of market manipulation by transactions/orders to trade (Article 1(2) of Directive 2003/6/EC)

As a consequence, no legislative change is envisaged.

Question: Do you think that the definition of market manipulation should be amended? If this is the case, what elements of the definition should be reconsidered?

According to CFA Institute's Code of Ethics and Standards of Professional Conduct[9], market manipulation is a practice that *distorts prices or artificially inflates trading volume with the intent to mislead market participants*. This agrees with the MAD definition of Market Manipulation. The level 3 guidance set out by CESR is helpful in that it gives examples of practices which are to be considered unlawful. Those examples can, however, never be exhaustive. As consequence we must continue to rely on a broad definition. Therefore, the Centre sees no need to amend the MAD directive in this respect.

2.3.2. Accepted market practices (AMP) (Articles 1(2)(a) and 1(5) of Directive 2003/6/EC)

At this stage, consideration should be given to whether further level 3 work on this topic could help.

Question: Do you consider that the rules on accepted market practices should be amended in the MAD? Do you think there is room for greater convergence among competent authorities in this area?

Yes, we support more convergence among competent authorities in this area and we consider further level 3 guidance as the most plausible way forward. Such guidance should consist of examples of what might be considered an accepted market practice. As mentioned regarding the definition of market manipulation above, such a list can never be exhaustive. Furthermore, that something is generally considered an accepted

[9] http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2005.n8.4568

market practice can never be a guarantee that it is not a market abuse under certain circumstances. At the same time, that an action is not an accepted market practice does not make it a market abuse per se.

Hence, we would encourage further CESR work on this topic, but we would not support any changes that would allow market practices that would undermine market integrity and investor confidence.

2.3.3. Exemption for buy-back programmes and stabilisation activities (Article 8 of Directive 2003/6/EC and Commission Regulation 2273/2003)

Not all buy-back programmes and stabilisation activities should benefit from an outright exemption (safe harbour) under the MAD rules. Even if some of them are currently not included within the scope of Regulation 2273/2003, they are not to be automatically considered as manipulative behaviour. There may be merit in considering the specific areas where greater convergence would be desirable in the application of these rules.

Question: Do you consider that the safe harbours for buy-back programmes and stabilisation activities should be revisited? Do you think that greater convergence is desirable in the application of the Regulation 2273/2003? What would be the most appropriate way forward in this respect?

The Centre's view on this topic is outlined in our response to CESR's consultation on the third set of level 3 guidance[10]. Briefly, we agree that some flexibility is needed in the application of the Directive. At the same time, we appreciate the efforts made to reach greater convergence. We believe that buy-back and stabilisation programs should be treated separately and we do agree that stabilisation should not be regarded as abusive solely because it occurs outside of the safe harbour.

Moreover, selling one's own shares during a buy-back program should eliminate the safe harbour for the program. There should not be any exemptions for programs managed by third party administrators.[11]

2.3.4. Short selling

Do you see a need for a comprehensive framework for short selling? If so, should it be addressed in the Market Abuse Directive? What issues should such a regime cover?

Should short sellers be required to report positions to competent authorities? Under which conditions should naked short selling be allowed? Should competent authorities be able to take emergency measures (e.g. temporary bans on short selling or on naked short selling) within prescribed limits when they need to address specific market risks and disruptions?

---

[10] http://www.cfainstitute.org/centre/topics/comment/2009/pdf/090109.pdf

[11] See our response to CESR regarding level 2 implementing measures from September 2002. http://www.cfainstitute.org/centre/topics/comment/2002/pdf/02market_abuse.pdf

Is there a need to enhance risk management by financial intermediaries and banks? Should investment firms and banks be required to have necessary arrangements in place to ensure timely delivery of financial instruments traded on own account or in the context of execution of clients' orders?

The Centre considers short selling a legitimate investing activity. From an investor's point of view, going short is nothing more the opposite of going long. There is nothing abusive or manipulative in that per se. CFA Institute polled its member during the last weeks of May 2009.[12] It turned out that 91 per cent of the respondents agreed that *short selling benefits the market by providing price discovery and market liquidity*. It provides bearish investors with a tool to take position on their market view even if they do not own the security in point. This is not any more suspicious than when a bullish investor takes a long position following his positive market view. Rather, short selling creates symmetry, corrects mispricing and helps avoiding bubbles being built up.

Nevertheless, a European framework may be appropriate. It is important that such a framework does not create asymmetry by putting inappropriate restrictions on short selling. Symmetry between short and long is important to avoid mispricing.

We have polled our members regarding which piece of legislation they find most appropriate for a European short selling framework. The picture is ambiguous. 37 per cent preferred MAD, 21 per cent preferred MiFID while 24 per cent did not see a need for a European framework addressing short selling.

Public disclosure would expose short sellers and their lenders to additional market risks and it might make investors less willing to sell short, thereby impairing price determination. Public identification of short sellers could send false signals and intentions to the market. Hence, the Centre does not support a requirement for short sellers to report positions to the public market.

This anonymity does not consider insiders. Insiders who sell short should be identified no later than the end of the close of business on the day of the trades, together with information about the dates and amounts of such trades. Even in the case where the insider is hedging a long position in the shares, the insider is taking actions based on concern that the share price will decline. Such actions conflict with their roles as managers or board members and come at the expense of other shareowners.

While keeping individual non-insider short seller's anonymity, regulators should have the means to make short interest data available real time or at least daily. This would eliminate the informational advantages held by some investors over the less well-connected majority.

Last year we saw competent authorities taking uncoordinated measures temporarily banning short selling for certain stocks. This created an unpredictable divergence which was not consistent with the objective of a single European financial market.

[12] http://www.cfainstitute.org/centre/news/short_selling_poll.html

Better European coordination of similar actions in the future is desirable. Further work is needed to examine how this could be achieved.

Concerning temporary bans on short selling CFA Institute and its members prefer up-tick rules over temporary trading bans. These have the advantage of permitting investors to continue to buy and sell securities while providing a break to the negative price pressure that occurs from time to time. See our member poll on short selling and our comment letter to SEC due later this month.

The Centre also takes the view that naked short selling with no intention to deliver the shares at settlement should be banned. Such activity is potentially manipulative and is a major cause of failed delivery.

10th June 2009.