Quoted Companies Alliance

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Dear Sirs,

Consultation Paper on the evaluation of certain elements of the Short Selling Regulation

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

We welcome the opportunity to respond to this consultation paper on the evaluation of certain elements of the Short Selling Regulation. The QCA Secondary Markets Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

We have responded below in more detail to the specific amendments from the point of view of our members, small and mid-size quoted companies.

Responses to specific questions

I. Exemption for market making activities

Q1 Taking into account the different regulatory approaches and purposes of MiFID II and SSR, what are your views on the absence of alignment between the definition of 'market making activities' in each of the capacities specified in Article 2(1)(k) of SSR and that of 'market maker' in Article 4(1)(7) of MiFID II? Do you consider that this absence of alignment is not appropriate, and if so what would you suggest?

Although we understand the desire to seek to harmonise the definition of 'market making' under SSR and MiFID II, we consider the current SSR definition to be broader. This will enable issuers to potentially benefit from greater liquidity than under the MiFID II definition.

In particular, a firm under SSR can benefit from the exemption if any of the three criteria detailed in Article 2(1) of SSR are met (assuming that the other conditions such as exchange membership are also met). This gives firms a greater opportunity to benefit from the SSR exemption. A firm which hedges positions arising from the fulfilment of client orders (so it can provide the requisite liquidity to small and mid-cap issuers) may not be able to benefit from the market making exemption under MiFID II.

Q2 Considering the new regulatory framework under the MiFID II/MiFIR, how do you suggest addressing the issue of the membership requirement in relation to those instruments that will remain pure OTC instruments despite the MiFID II/MiFIR framework? Should the membership requirement not apply to those pure OTC instruments? Please provide justifications.

We have no comments.

Q3 Where market making activities on exchange-traded instruments are carried out OTC only, should they be able to benefit from the exemptions? Do you consider that the application of the exemptions in those cases can be detrimental to the interest of investor and consumers? Please provide justifications.

We do not have a strong view about the SSR exemption applying to exchange-traded instruments carried out OTC. However, if market making activities in relation to such OTC trading were to benefit from an exemption, this would not seem to be consistent with the overarching objectives of MiFID II to make markets generally more transparent and accountable.

Q4 Do you think that the membership requirement should be deleted where the market making activity in relation to exchange-traded instruments is carried out OTC as well as on a trading venue? Please explain.

Please see our response to question 3 above.

Q5 Do you have proposals in relation to the improvement of the transparency of market making activities conducted OTC and exempted under the SSR? Do you think that requiring a firm willing to benefit from the exemption for its market making activities conducted OTC to qualify as systematic internaliser is a viable option that would improve the transparency of their activity? Please provide justifications.

Please see our response to question 3 above.

Q6 Do you think it would be appropriate to enlarge the set of financial instruments eligible for the exemption for market making activities? If so, which financial instrument(s) would you suggest? Please provide justifications.

We agree that, without a clear exemption under SSR, market makers in bonds who adopt a strategy to hedge their market making risks – for instance through trades in sovereign debt – would face additional costs. Not having an exemption could inhibit market makers' ability to provide liquidity in those financial instruments which would potentially be an issue for small to mid-size quoted companies.

We would support the exemption being extended to other financial instruments, in particular corporate bonds, convertible bonds and subscription rights.

Q7 Do you think that market makers should be able to notify the list of financial instruments by using indices, as long as they are market making in all the financial instruments included in the used indices? Besides indices, which other sectoral categories / classification could be used by market makers to indicate a group of financial instruments for which the market maker is seeking exemption? Please provide justifications.

We believe that the current regime for the notification of a market maker's intention to make use of the exemption, whereby firms are required to indicate all the single shares for which they intend to make use of the exemption, is unsatisfactory.

We agree that the current instrument-by-instrument approach to the exemption should be changed (as further set out in this response). The process could give rise to administrative burdens. Many of the most significant market makers in the UK trade a variety of securities at any time within a specified category, such as an index, sector or market.

We would support market makers being able to notify lists of financial instruments by using indices or sectoral categories. An alternative option that would undoubtedly be favoured by many of the investment firms carrying out market making activities for our issuer members would be granting the exemption on the basis of market segments. In the UK, the London Stock Exchange has a variety of market segments from which to select, which could form the basis of the exemption notification in the UK[1].

Market makers should have a reasonable intention at the time of the notification to trade the majority of the securities within the relevant index, sector or segment. However, they should not actually need to demonstrate that they will trade all the instruments in the relevant category, since this cannot easily be determined at the time of the notification and will depend on future market and issuer specific sentiment.

Q8 Do you think that the 30-day period mentioned in Article 17(5) of the SSR should not apply when the notification refer to instrument admitted to trading for the first time on an EU trading venue? Please provide justifications.

We agree that the 30-day period notification should not apply when the notification refer to instrument admitted to trading for the first time on an EU trading venue. Small to mid-size companies coming to market will be heavily reliant on market makers to assist in providing much needed liquidity. If those market makers are unable to provide the liquidity required through their short selling activities due to the requirement for notifications to be made not less than 30 calendar days before trading, this may negatively impact on our issuer members, many of whom are small-to-mid size quoted companies.

Q9 What would you suggest to reduce the 30-day period mentioned in Article 17(5) of the SSR to provide for a faster process? What are your views on a quicker procedure for market makers that have already entered into a market making agreement/scheme with a trading venue or the issuer to classify as market maker in such venue? Please explain.

The 30-day period should be removed to avoid the potential risk that market makers are unable to make markets in securities due to the pre-notification requirement. In many cases, market makers wish to trade small and mid-size quoted companies' securities immediately and so it is these companies who will ultimately lose out if those market makers have to delay their activities.

[1] http://www.londonstockexchange.com/products-and-services/trading-services/registered-market-makers-by-security.xls

As an alternative to removing the 30-day period, we consider that SSR should be amended to make clear that market makers can rely on the market making exemption under SSR following the requisite notification to the competent authority, even where the 30-day period has not elapsed.

In both the above cases, amending SSR would not represent a significant issue if the relevant competent authority has the power to prohibit the use of the exemption at any time.

II. Short term restrictions on short selling in case of a significant decline in prices: Article 23 of SSR

Q10 What are your views on the proposal to change the procedure to adopt short term bans under Article 23 of the SSR? Please elaborate.

We have no comments.

Q11 What are your views on the proposal to change the scope of short term bans under Article 23 of the SSR? Please elaborate.

We have no comments.

III. Transparency of net short positions and reporting requirements

Q12 Do you see any reasons to change the current levels of the thresholds regarding the notification to competent authorities and the public disclosure of significant net short positions in shares? Please elaborate.

We have no comments.

Q13 Do you see benefits in the introduction of a new requirement to publish anonymised aggregated net short positions by issuer on a regular basis? Can you provide a quantification of the benefit of such new requirement to your activity? Please elaborate.

We have no comments.

Q14 Do you agree that the notification time should be kept at no later than 15:30 on the following trading day? If not, please explain.

We have no comments.

Q15 Do you agree that the publication time should be changed at no later than 17:30 on the following trading day? Please elaborate.

We have no comments.

Q16 What are your views on a centralised notification and publication system at Union level? Can you provide a quantification of the benefit of such centralised notification to your activity? What are your views on levying a fee on position holders to have access to and report through such a centralised system? Please elaborate.

We have no comments.

Q17 Which other amendments, if any, would you suggest to make the notification less burdensome?

We have no comments.

Q18 Do you agree that the identification code of the position holder should be the LEI and that such code should be mandatory for legal entities? Please elaborate.

We have no comments.

Q19 What are your views on the method that should be favoured, the nominal method or the duration-adjusted method as described above? In the latter case, do you think that the thresholds should be changed? Please elaborate.

We have no comments.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

Tim Ward
Chief Executive

APPENDIX A

Quoted Companies Alliance Secondary Markets Expert Group

Jon Gerty (Chair)	**Peel Hunt LLP**
Mark Tubby (Deputy Chair)	finnCap
David Cooper	Cenkos Securities PLC
Andrew Collins William Garner	Charles Russell Speechlys LLP
Jeremy Phillips	CMS
James Lynch	Downing LLP
Stephen Streater	Forbidden Technologies PLC
Keith Hiscock	Hardman & Co
Shreena Travis	Henderson Global Investors
Fraser Elms Katie Potts	Herald Investment Management Ltd
Claire Noyce	Hybridan LLP
John Howes	Northland Capital Partners Limited
Ann Whitfield	Panmure Gordon & Co PLC
Sunil Dhall	Peel Hunt LLP
James Stapleton Simon Rafferty	Winterflood Securities Ltd