

# IPMA

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# LIBA

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Ref: S4-30

30 April 2003

Mr Karl-Peter Replinger  
DG Market  
107 Avenue de Cortenberg  
B-1000 Brussels

Dear Mr Replinger

The International Primary Market Association (IPMA) and the London Investment Banking Association (LIBA) are confirming the Associations' comments, given to you by Mr Dammers at his meeting with you on 28<sup>th</sup> April, 2003, on the Commission's Working Document ESC14/2003 on the Implementation of Article 8 of the Directive on Insider Dealing and Market Manipulation. IPMA is the trade association which represents the interests of the international banks and securities firms which underwrite and distribute international debt and equity securities in the primary market. It has 56 members representing the leading underwriters in all of the world's major financial centres. A list of its members appears on its website [www.ipma.org.uk](http://www.ipma.org.uk). The London Investment Banking Association represents the major European and international investment banks and securities houses which base their European operations in London. A list of its members can be found on its website [www.liba.org.uk](http://www.liba.org.uk).

### **General comments**

We welcome the establishment of a safe harbour for share buybacks. It will provide much greater certainty to the market and will assist in effective execution of buyback programmes. In general, we agree that limits on the price and volume at which shares can be repurchased are sensible. However, we feel that the rules addressing these limits need to be more carefully drafted in order to avoid penalising legitimate activity. In addition, we feel that some of the rules in the safe harbour address issues related to shareholder protection and corporate governance which are not appropriate for a system of rules governing market abuse.

## Specific comments

Article 3(1): Programme must comply with the Second Company Law Directive. The safe harbour covers “meeting obligations arising from employee share option programmes and other allocations of shares to employees” but the vehicles which effect such transactions are often structured as trusts outside the corporate structure of the employer’s group. The safe harbour should allow purchases by such vehicles provided they are made bona fide in the interests of the relevant employee scheme.

Article 3(3): Trade reporting obligations on issuer. The rule appears to require the company to arrange for reporting to relevant regulators. However, companies do not have trade reporting obligations. Those obligations fall upon member firms of relevant stock exchanges and other regulated financial intermediaries. If a company chooses to execute its buyback programme off exchange in circumstances where there are no trade reporting obligations, we do not believe it should lose the benefit of the safe harbour provided information about such transactions is disclosed in accordance with Article 3(2) of the proposed Regulation.

Article 4(1): Price limits on share repurchases. We understand that the intention of this rule is to reflect the existing US rules. In that case the rule should make clear that the price limit is a price no higher than the higher of the last independent trade or the current independent bid. Otherwise in a rising market no repurchase transactions would be permitted at all.

Article 4(2): Volume limits. We believe the rules should address more clearly the situation where reported trading volume is low (e.g., because applicable exchange rules do not require the reporting of over-the-counter trades). There should be an exception for trades above relevant block trade thresholds that comply with the price limits. Such an exception would ensure that wholesale sellers are not unduly prejudiced by low trading volumes and would give issuers access to greater liquidity without increasing the risk of market abuse. Alternatively, the rule should include an alternative daily volume cap linked to the market capitalisation of the issuer concerned.

Article 5(1): Prohibition on sales of shares. The term “sell” should be defined more clearly. As drafted, we believe this prohibition is too broad. For example, it suggests that one single grant or exercise under an employee share scheme would render the safe harbour unavailable. If a company does decide to sell shares, we do not believe the company should be required to approach shareholders again for further authority to continue repurchases provided an appropriate announcement is made to the market that the repurchase programme is to continue.

If you have any questions about the foregoing comments or would like any additional information, please let C R Dammers know. John Serocold is the director responsible for these matters at LIBA.

Yours sincerely

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