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STABILISATION AND ALLOTMENT

A EUROPEAN SUPERVISORY APPROACH

Consultative Paper

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I. Introduction

The continuing development of the Single Market in financial services, in particular following the introduction of the Euro, is likely to generate a progressive increase in the number of cross-border offerings of securities. For the efficiency of the market and protection of investors, it is desirable that FESCO members develop common approaches to key elements of the offering process.

According to the FESCO charter, the objectives of protecting investors and ensuring the integrity and transparency of markets are fundamental to achieving and maintaining sound and stable financial markets.

FESCO has already published “Market Conduct Standards for Participants in an Offering” (99-FESCO-B; “Market Conduct Standards”). These standards deal with the control and dissemination of information and certain aspects of trading activity. The purpose of this present paper is to address those issues that were not covered in the Market Conduct Standards and where there is a need for harmonisation. These are stabilisation practices including the so called greenshoes and the allotment of securities. The standards set forth in this paper complement and add detail to the Market Conduct Standards for certain areas, however, they do not intend to alter the scope of application of the FESCO Market Conduct Standards.

Furthermore, the experts group on market abuse has proposed to the European Commission a paper on “Market Abuse; FESCO's response to the call for views from the Securities Regulators under the EU's Action Plan for Financial Services COM(1999)232” (FESCO-99-096l, the “Market Abuse Paper”) providing harmonised rules on what constitutes market abuse. In its work, the group has co-ordinated closely with the experts group on market abuse with the aim of producing complementary papers.

The standards on stabilisation set forth in this paper are applicable to both debt and equity securities. Even though stabilisation of equity securities is more in the focus of regulatory concern, it is essential to extend the safe harbour protection of the stabilisation rules also to Investment Services Firms dealing with debt issues. On the other hand, the section on allotment is applicable only to equity issues. This reflects the fact that regulatory problems in relation with allotment have occurred nearly exclusively in respect of equity issues. The different distribution mechanisms for debt issues may play a role in this, as the majority of debt issues are distributed without an allotment. It would not seem prudent to undertake a harmonisation of allotment practices for debt securities when, in this area, there appears to be no need for it.

In both parts of the paper, the scope extends to securities to be listed or traded on a regulated market within the meaning of the Investment Services Directive (Directive 93/22/EEC). This corresponds to the scope of application of the European regime on market abuse proposed in the Market Abuse Paper. The Market Abuse Paper does, however, also propose to broaden the concept of a regulated market in the forthcoming revision to the ISD. Should this happen, the scope of application of this paper would broaden accordingly.

For European cross-border issues of securities, it is necessary to align stabilisation rules to make sure that all parties involved are covered by similar safe harbour rules. For issues involving European and non-European jurisdictions, it is important to have a harmonised framework that will be recognised by all, in particular non - EEA jurisdictions. It is the aim of this paper to provide clear and coherent regulatory standards that allow all European issuers and Investment Services Firms to rely on substantially the same safe harbour rules with regard to stabilisation for all their world-wide activities. National stabilisation rules that implement the standards set forth in this paper will be recognised by all other FESCO members. The result of such recognition would be that a European entity undertaking stabilisation could do so according to the stabilisation rules of its home jurisdiction, even when undertaking stabilisation in other European jurisdictions. Ideally, other important non - EEA authorities should also recognise these FESCO standards, with an ancillary recognition for the implementation of each FESCO member.

The standards on stabilisation set forth in this present paper provide a safe harbour against charges of market abuse as defined in the Market Abuse Paper. This safe harbour provides a defence against charges of market abuse in cases where the standards on stabilisation as implemented by the competent national authority were followed. Cases where the standards have not been adhered to do not automatically constitute market abuse. In such cases, however, no defence of legitimate stabilisation can be raised. The concept that stabilisation is a legitimate form of potential market distortion is already contained for cases of insider trading in the 12th recital of the Insider Directive (89/592/EEC). It is expanded in this paper for the different types of market abuse, which are: market manipulation, insider trading and the dissemination of false and misleading information.

To provide an environment conducive to cross-border offers in the integrating European securities market, certain key elements of the distribution process must be harmonised. Allotment is one of those elements. Achieving harmonisation in this area will allow Investment Services Firms across Europe to conduct an allotment of securities with one single and clear set of standards.

Providing harmonised standards is also important to achieve an equal level of investor protection across the EEA, in particular in offerings with a cross-border element. This need is particularly pressing for allotment, as this is an area, where the interests of participants normally diverge. In an offering of securities, investors expect to be treated fairly and to receive an allotment based on clear and documented criteria. In many instances this is currently not the case. Investors complain about receiving allotments that do not correspond with their expectations. This is exacerbated by a lack of reliable information about the allotment process. Offerors expect to be able to maximise the gains from a share issue, and to be able to shape shareholder structure through the allotment. With these expectations, offerors also stand to benefit from clear regulatory guidance. FESCO is committed to provide a framework which is consistent with the requirement of fair treatment of investors. In this pursuit, transparency and disclosure are key elements.

This paper proposes a "FESCO European Code on Allotment" (the "Code"). The concept of a code differs from standards usually proposed by FESCO, as it combines substantive and formal harmonisation. FESCO members may use the Code as the basis of their rulemaking, much as they would with standards. They may, however, also choose to transpose the Code directly into national rules. With a direct transposition, not only the substance of their rules but also the formal elements of the Code benefit from harmonisation.

Most Member States have legislation and/or regulation addressing the issues of stabilisation and allotment. These vary greatly, however, in scope and specificity and there is no uniformity across the EEA. There is, with the exception of indirect references (see above), no European law in the areas covered in this paper.

FESCO members will seek to implement the standards and the Code set out in this paper in their regulatory objectives and, where possible, in their respective rules. If a FESCO member does not have the authority to implement certain standards or the Code, it will commend these to its government and/or to the responsible regulatory authority. This commitment is underpinned by the disclosure mechanism agreed upon by FESCO members. This provides for regular disclosure by FESCO, how far the implementation of FESCO standards has progressed in each member's jurisdiction.

II. Definitions

Stabilisation - any purchase or the offer to purchase the Relevant Securities or transactions in Associated Securities equivalent thereto which is undertaken
(1) by an Investment Services Firm involved in or undertaking a public offering of Relevant Securities,
(2) in order to support the market price of the Relevant Securities, and
(3) which, provided that national Stabilisation rules are followed, will not constitute market abuse within the meaning of the relevant laws, rules and regulations.

Relevant Securities – shares, as well as securities equivalent to shares and for purposes of section IV. 1 of this paper also debt securities as well as securities equivalent thereto which are offered to the public in the European Economic Area and which are to be traded or listed on a Regulated Market, including securities identical thereto which are already traded or listed on a Regulated Market.

Associated Securities – Associated Securities shall mean the following financial instruments provided that they are negotiable on the capital market
(1) contracts or rights to subscribe for, acquire or dispose of Relevant Securities,
(2) financial derivatives on Relevant Securities.

Overallotment – allotment to investors of a greater number of the Relevant Securities than originally offered.

Overallotment Facility - clause in the underwriting agreement authorising the allotment to investors of up to a certain additional amount of Relevant Securities.

Overallotment Option (Greenshoe Option) – option granted by the Offeror in favour of the Investment Services Firm(s) involved in the offering, providing that for a certain period of time after the offer of the Relevant Securities this firm(s) may purchase up to a certain amount of Relevant Securities at the offer price.

Offeror - the shareholder(s) who were prior holders of or the entity issuing the Relevant Securities being offered to the public.

Free Retention - a contingent of Relevant Securities (normally below 5% of the offer) put at the disposal of certain members of the consortium for free distribution, *i.e.* distribution outside pre-determined and disclosed allotment methods.

Regulated Market - the markets as defined in Article 1 No. 13 of the Investment Services Directive (Directive 93/22/EEC).

Investment Services Firms - investment firms and credits institutions as defined in Article 1 Nos. 2 and 3 of the Investment Services Directive (Directive 93/22/EEC).

III. The Standards

STABILISATION

1. **Stabilisation may only be undertaken with regard to Relevant Securities offered to the public in the context of an initial or secondary offering to support the price of such Relevant Securities in the secondary market for a limited period of time after the commencement of trading of such Relevant Securities on a Regulated Market.**

2. **The responsibility for Stabilisation must be borne by one entity within the offering consortium (the "Stabilisation Manager").**

3. **The possibility of Stabilisation must be disclosed in the offering or listing prospectus. Stabilisation activity must be disclosed and recorded in an appropriate manner.**

4. **The Overallotment Option may only be exercised in connection with an Overallotment of securities. The Overallotment Facility and the Overallotment Option must be disclosed in the prospectus.**

ALLOTMENT

5. **In the allotment of securities, investors must be treated fairly by the involved Investment Services Firms. Disclosure of the proposed allotment process must be made in the prospectus. The result of the allotment must be disclosed in an appropriate manner.**

IV. Stabilisation

1. Stabilisation - the Regulatory Regime

Investment Services Firms involved in an initial or secondary public offering may carry out Stabilisation by a variety of means. The intention in all cases is to support the price of the newly listed or traded securities. This section deals with the requirements applicable to Stabilisation transactions in general. The use of Overallotment Facilities and Overallotment Options is discussed in more detail below.

Stabilisation is an optional activity undertaken by Investment Services Firm(s) involved in a public offering of securities. The main conditions of the Stabilisation process are agreed between the Offeror and such firm or firms.

The main purpose of these transactions is to support the price of the new issue from falling as the consequence of initial pressure from selling orders. In this situation, Stabilisation allows some support for prices in an otherwise unbalanced market situation. Stabilisation facilitates the distribution process for new issues by giving the involved Investment Services Firms a safe harbour for certain activities while overseeing that process. It is this purpose of creating a balanced market that makes Stabilisation permissible.

The benefits to the markets to be gained through Stabilisation can be considerable. New, particularly small and medium sized companies are encouraged to access the capital market, established issuers will be more comfortable raising funds from the securities market through capital increases. Investors will feel more confident making an investment, where there is an expectation, that at least for a limited period of time, an orderly market will be actively encouraged. They must always be aware, however, that there is no guarantee, that Stabilisation will be undertaken. Investors should therefore not base an investment decision on the possibility that the involved Investment Services Firms will actually undertake Stabilisation. Eventually, Stabilisation may also contribute to lower cost of funding. Stabilisation can under certain circumstances be beneficial by alleviating sales pressure generated largely by short term investors (so called flippers).

Likewise, stabilisation poses some risks to the market. Generally, there is a risk that Stabilisation activity could conceal the true market demand by sustaining a price for too long a time at a potentially artificial level. Taking into account that furthermore:

- Stabilisation transactions are undertaken to affect the market price of the Relevant Securities (potential of market manipulation); and
- the entity undertaking Stabilisation may have insider information (within the meaning of Directive 89/592/EEC) (potential of insider trading); and
- the fact that Stabilisation may be undertaken is material to the market price of the Relevant Securities (potential dissemination of false or misleading information);

Stabilisation must be conducted according to specific rules if it is to have the benefit of the safe harbour. These rules are aimed at avoiding the potential risks associated with market abuse set out above, i.e. market manipulation, insider trading and the dissemination of false or misleading information.

Stabilisation rules therefore must deal with permissible stabilisation transactions (i.e. time and price rules), market transparency safeguards and investor information requirements. The rules set out below are drafted to confine Stabilisation transactions narrowly to certain time periods and certain prices. Moreover they provide for disclosure of Stabilisation arrangements to investors as well as for awareness of market participants that stabilisation is taking place. With this threefold effect of the rules, the potential risks associated with Stabilisation are, if not counterbalanced, at least contained.

For regulatory purposes, it is also important to establish clear lines of responsibility. To achieve this, standard No. 3 prescribes that the responsibility for Stabilisation must be borne by one entity within the offering consortium. This requires the clear and transparent allocation of overall responsibility to one entity in the consortium, the Stabilisation Manager. As the supervision of market abuse and of Stabilisation is a national matter, this requirement applies also at each national level. Therefore, on the national level, one entity must assume responsibility for Stabilisation activity vis à vis the regulator. This may be the Stabilisation Manager or an appointed agent. In this context, it is clear that adequate co-ordination of Stabilisation activity must occur both nationally and across borders, and that a lack of co-ordination cannot exculpate any entity involved in Stabilisation activity from failure to adhere to national Stabilisation rules.

The question of proprietary trading (*i.e.* own - account transactions undertaken in the normal course of business without a Stabilisation purpose) of the Stabilisation Manager and other consortium members, although closely connected to stabilisation is not treated in the Stabilisation rules. The Stabilisation rules in their entirety constitute a safe harbour against charges of market abuse for Stabilisation transactions. It follows, that other transactions, undertaken in the course of normal proprietary trading are not included in this safe harbour.

FESCO European Standards for Stabilisation

Stabilisation may only be undertaken with regard to Relevant Securities offered to the public in the context of an initial or secondary offering to support the price of such Relevant Securities in the secondary market for a limited period of time after the commencement of trading of such Relevant Securities on a Regulated Market.

a. Stabilisation Period

Stabilisation shall be permitted only during a defined period after the commencement of trading of the Relevant Securities on a Regulated Market (usually between 30 and 60 days). The Stabilisation period must be disclosed to the market in advance.

b. Stabilisation Price

(1) Equity Securities

Stabilisation transactions may not be executed above the offering price. Where the Relevant Securities trade below the offering price, the last independent transaction is the upper price limit for Stabilisation transactions.

(2) Debt Securities
Stabilisation transactions may only be executed for the purpose of price support.

c. Liquidation of Stabilisation transactions
The Relevant Securities bought by the Stabilisation manager during the Stabilisation period may be used to cover any Overallotment. Relevant Securities acquired in excess of that shall be disposed of in the market in an orderly way, without interfering with the price formation process.

The responsibility for Stabilisation must be borne by one entity within the offering consortium (the "Stabilisation Manager").

d. The Stabilisation manager
The overall responsibility for Stabilisation must be clearly and transparently allocated to one entity (the Stabilisation Manager) within the consortium. Vis à vis the regulator in each jurisdiction where stabilisation takes place, one entity within the consortium must assume regulatory responsibility. There must be adequate co-ordination between all entities undertaking Stabilisation, which include the Stabilisation Managers as well as any appointed agents.

The possibility of Stabilisation must be disclosed in the offering or listing prospectus. Stabilisation activity must be disclosed and recorded in an appropriate manner.

e. Prospectus Disclosure
The prospectus must contain adequate disclosure on the following items:
- the existence of Stabilisation arrangements;
- the optional nature of such arrangements;
- the period during which stabilisation may occur;
- the identity of the Stabilisation Manager in each affected jurisdiction and of any appointed agents; and
- other aspects of Stabilisation which could be material for an investor's decision to subscribe for the Relevant Securities.

f. Transparency of Stabilisation Transactions
Transparency of Stabilisation transactions is an essential element to protect both investors and the integrity of the securities markets, in particular in the price formation mechanism. Transparency requirements must take into account the characteristics of the affected markets.

Each of the following methods as well as other methods equivalent thereto are deemed to be acceptable:
- in electronic markets the labelling of each order entered by the Stabilisation Manager or his appointed agents during the Stabilisation period; or

- disclosure of Stabilisation transactions at the end of the trading day in a manner that permits an accurate assessment of the market impact of such transactions.

g. Recordkeeping requirements

All Stabilisation transactions carried out according to these Stabilisation rules must be recorded separately in electronic form. The recorded information shall include for each order, at least the information set forth in Article 20 para (1) of the Investment Services Directive (93/22/EEC). This information must be at the disposal of the competent authority.

2. Overallotment Facility and Overallotment Option

Within the context of the agreement entered into between the Offeror and the Investment Services Firms involved in the offering, an Overallotment Facility and/or an Overallotment Option (which is often referred to as Greenshoe) may be agreed. The Overallotment Facility allows an overallotment, *i.e.* the allotment of more securities than originally planned with the same conditions as the original issue. The Overallotment Option permits the purchase of up to a certain amount of additional shares from the Offeror, at the offering price, within a specific time after the end of the offering period.

It is common practice to reserve securities amounting to up to 15% in excess of the original offer for the Overallotment Facility. The period after the offer, within which the Overallotment Option may be exercised to acquire these additional shares from the Offeror is usually between 30 and 60 days. For that time, a short position is established.

Two scenarios are foreseeable during that period:

- The market price drops below the offer price – in this case the short position could be covered with shares bought on the market;
- The market price goes up - in this case the short position could be covered through the exercise of the Overallotment Option.

Both the Overallotment Facility and the Overallotment Option are closely related to Stabilisation. The Overallotment Facility may serve to satisfy excess demand at an early stage in the offering, helping to achieve a balanced market. It may also be used to create the ability to buy into the market in cases where there is excess supply. In both cases, the Overallotment Option hedges the Overallotment, its exercise has a neutral market effect.

Alternatively or in addition to the Overallotment Facility, which is hedged by the Overallotment Option, an Overallotment can also be undertaken without a hedging device. The naked short thus established entails considerable risk. Covering such a naked short risks contravening Market Abuse rules. It should be clear that influencing the price of the Relevant Security during the Stabilisation period and outside of Stabilisation rules is not within the safe harbour for legitimate Stabilisation transactions, even where there is a need for it to cover a naked short arising out of an Overallotment.

Concerns that attach to the Overallotment Facility and the Overallotment Option relate to investor information and protection, to market transparency and to market integrity. To alleviate these concerns, the following standards must be adhered to. Disclosure matters are also covered by the FESCO European Code on Allotment (see below) which must be read in conjunction with these standards. It is important to stress that these standards do not allow Investment Services Firms to choose whether they want to act in accordance with the standards and consequently be able to raise the safe harbour defence, or whether they want to act outside of the standards with the risk that their actions may be prosecuted as market manipulation. These standards in their entirety must be adhered to in every instance.

The Overallotment Option may only be exercised in connection with an Overallotment of Relevant Securities. The Overallotment Facility and the Overallotment Option must be disclosed in the prospectus.

a. Disclosure

The prospectus must give proper disclosure of the existence of an Overallotment Facility and an Overallotment Option, including the amount of shares available for Overallotment, the exercise period of the Overallotment Option and any conditions for the use of the Overallotment Facility or exercise of the Overallotment Option.

b. Market Transparency

The exercise of the Overallotment Option must be communicated to the public in suitable detail. This should normally already be required by rules on the disclosure of price sensitive information.

c. Market Integrity

The Overallotment Option must not be exercised where securities have not been overalloted by the beneficiary or beneficiaries of the Overallotment Option.

V. Allotment

FESCO members have acknowledged that, especially in times when offerings are heavily oversubscribed, certain rules of conduct for Investment Services Firms are needed in order to ascertain the fair treatment of investors. The rules concerning allotment should not however be overly cumbersome or restrictive, and they should include certain fundamental principles of fair treatment as well as minimum disclosure standards for allotment in an offering. Fair treatment does not preclude the right of the Offeror to give either preferential treatment or non-preferential treatment to certain groups of investors or individual investors.

The rules on allotment set forth below complement and add detail to the rules of conduct for Investment Services Firms where the relationship with clients [1] subscribing for securities in an offering is concerned. They also provide disclosure requirements that go beyond what is currently required by European law.

Some of the rules set forth below could apply equally to the Offeror as they do to the participating Investment Services Firm. This would depend on the division of responsibility between the Offeror and the involved Investment Services Firm. This division of responsibility can be freely agreed, and in practice the roles assumed by the Offeror and the involved Investment Services Firms vary greatly. In some instances, the Offeror will retain control over very detailed aspects of the allotment process and in other cases, the involved Investment Services Firms undertake the allotment entirely in their own responsibility. Generally, the responsibility for allotment vis a vis the regulator must be borne solely by one or more Investment Services Firm within the consortium. This reflects the fact that most FESCO members supervise only licensed investment services firms. Certain FESCO members, who have supervisory responsibility also with regard to certain Offerors, will apply the FESCO European Code on Allotment also to such Offerors.

In an allotment, the responsible entity or entities within the consortium (the "Allotment Manager") should promote the best interest of its clients, which could be either or both investors and Offerors. In doing this, it must take account of the necessity of upholding fair treatment of investors and endeavour to avoid conflicts of interest.

In achieving this, the various regulatory approaches currently followed by FESCO members with regard to allotment had to be reconciled. There was a certain tension here between general and allotment - specific rules as well as with regard to the level of detail of the applicable rules. The rules now proposed focus on disclosure and transparency of the important features of the allotment process in an issue and on the results of this process. Providing disclosure and transparency requirements entails that what was disclosed about the allotment will be adhered to. Hence, even though the freedom of Investment Services Firms and Offerors to structure an allotment is relatively undiminished, subsequent changes to important features of the allotment process are curtailed. This aids investors to make an informed investment decision on the basis of facts they can rely on.

[1] For purposes of this paper, a client relationship exists when an investor subscribes for securities through an Investment Services Firm.

A question that was debated at length concerns the favourable treatment of the Allotment Manager's own clients and of orders made through syndicate members. It seems to be current practice in a number of jurisdictions that subscriptions made with certain, in particular non-syndicate Investment Services Firms, will not be allocated any securities in oversubscribed offerings. Where that is the case, such Investment Services Firms should be informed about this. These Investment Services Firms should, in turn, inform their clients. Such information to clients should already be required by general conduct of business rules; in addition, it should also be included in the prospectus. This information is of particular importance in cases where subscription fees are charged regardless of a subsequent allotment.

In a number of jurisdictions, subscriptions must be treated in the same manner, regardless of which Investment Services Firm they are made through or by. This implies that there can be no differentiation of subscriptions based on which Investment Services Firm they are made through or by. Therefore, the categorisation of subscriptions in the various categories, classes and tranches should be made irrespective of the role that the respective Investment Services Firm plays in the allotment process.

Consultees are specifically invited to comment on their preference for either of the two approaches just described and their reasons for it.

FESCO members are committed to the code on allotment set forth below. With the present code, other than with standards, FESCO members have a choice of implementation mechanism. They may either, as with other FESCO standards, use the code as the foundation of their rules on this issue. They may, however, also choose to transpose the code directly into national rules. With this approach, substantive harmonisation is accompanied also by formal harmonisation.

The FESCO European Code on Allotment

In the allotment of Relevant Securities, investors must be treated fairly by the involved Investment Services Firms. Disclosure of the proposed allotment process must be made in the prospectus. The result of the allotment must be disclosed in an appropriate manner.

This code is applicable to share issues, offered to the public, where the offered shares are to be listed or traded on a Regulated Market.

1. Allotment Principles

In an allotment, all investors must be treated fairly. Investors in different tranches, categories, classes or types may be treated in a different manner. The concept of fairness in this context requires inter alia that a classification of investors into different categories be made according to clear and documented criteria and that the allotment process to be used is adequately disclosed in advance. In any case, an allotment should meet the criteria of overall integrity and the Allotment Manager should use procedures of best practice which may vary from country to country.

a. Allotment Manager

The responsibility for allotment must be clearly and transparently allocated to one or more entities within the consortium (collectively the " Allotment Manager") vis à vis the regulator in each jurisdiction.

b. Allotment Methods

Various methods can be used in an allotment of securities to retail investors, such as scaling down, progressive scaling down, lottery, priority based on timing of bid/subscription. The method or combination of methods used within a tranche should be systematic, and in choosing the method the Allotment Manager should consider the individual characteristics of the offering. The same allotment methods and criteria must apply to the original tranches and any over-allotment.

In order to avoid disruptions in the subscription process, it is not recommended that allocations in the retail tranche be based solely on the timing of bids.

The Allotment Manager must ensure that where the consortium is bound to one method or a combination of methods, all members of the consortium, and all other firms receiving share for allotment, adhere to this method or methods.

2. Pre – Allotment Disclosure

As a minimum requirement the following information must be made public in an adequate manner and timely enough to allow investors to review the information before the start of subscription; where this information is not contained in the prospectus, the prospectus must indicate the manner in which it will be disclosed:

- The main allotment criteria which entail (as a minimum) both the division between domestic and international tranches and the division between retail, institutional and issuer's employee tranches if any.

- The conditions under which the division between tranches may be changed (claw - back), the maximum size of such claw back and any applicable minimum percentages for individual tranches.

- The allotment method or methods to be used for the retail tranche in the event of an over-subscription.

- Pre-determined preferential treatment to be accorded to certain investors or classes of investors or certain affinity groups, including the percentage of the offer reserved for such investors, class or classes of investors or affinity groups and a description of such preferential treatment.

- whether favourable Treatment will be accorded to the Allotment Manager's own clients and to orders made through syndicate members.

- The amount of shares reserved for Free Retention and the potential beneficiaries of allotments from such retained shares. In particular, it must be disclosed when investors or members of investors classes or affinity groups already receiving preferential treatment are not specifically excluded from receiving allotments of retained shares.

- A target minimum individual allotment within the retail tranche.

- The conditions for the suspension of the offering as well as the date on which the offering may be suspended at the earliest.

- A description of the manner for refunding excess amounts paid by clients, including the terms of any interest to be paid on such amounts.

3. Disclosure of Allotment

a. Public Disclosure

The Allotment Manager must ensure that the final size of the offering, together with the allocation between various tranches - whether institutional, retail or, where applicable, employee and whether domestic or international - is made public after the end of the subscription period. If preferential treatment, as disclosed in the prospectus, has been granted to certain investors or classes of investors or certain affinity groups, the size of the allotment referred to should also be disclosed. Accurate and full disclosure must be made of the demand situation; such disclosure must in particular allow adequate analysis of the information provided.

During the subscription period, public disclosure of the demand situation is not required. It may be made on a voluntary basis, and in that case, it must comply with the appropriate section of the Market Conduct Standards.[2]

b. Disclosure to the Regulator

The recipients of allotments from the Free Retention and from friends and family programmes[3] and the allotments to employees of Investment Services Firms participating in the offering must be disclosed by each consortium member to the Allotment Manager, who must hold such information at the disposal of the regulator. Where that is not permissible, each consortium member must hold such information at the disposal of the regulator.

c. Client Information

Clients must be informed (in writing or by other means providing an adequate record) of their individual allotment, if any. This information requirement also applies in the event that no allocation is obtained.

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[2] 22.: “The disclosure of selective information relating to demand for an offer may be potentially misleading. Participants in an offering can choose either to disclose promptly and regularly demand for an offering or choose to remain silent. Should an offering be structured in various tranches and sub-tranches, any information released to the public about the current status of demand in those tranches should not be selective or likely to create a misleading impression of overall demand.”

[3] Programmes where preferential treatment is accorded to friends and family of the Offeror or of the involved Investment Services Firms.

4. Consortium Allotment

Employees (including managers, directors or board members) of Investment Services Firms participating in an offering may subscribe for shares thus offered. Such employees must be treated as retail investors. They may not be included in any group receiving preferential treatment. Employee allotments must not take preference over customer allotments. Investment Services Firms participating in an offering may not subscribe for such shares.

Any firm participating in an offering must have adequate internal rules on employee allotments as well as adequate compliance procedures to enforce such rules.

It is also essential to establish adequate policies and procedures within the participating Investment Services Firms organisations in order to segment the flow of material information (Chinese walls) and to prevent the misuse of price-sensitive information, as described in the Market Conduct Standards.

5. Recordkeeping

The Allotment Manager must keep adequate records of the entire allotment process. He is responsible for holding consortium members to the same standards of recordkeeping. This information must be at the disposal of the regulator.