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European Commission Consultation on a Code of Conduct for Interest Representatives

Response by the London Investment Banking Association (LIBA)

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LIBA is the trade association which represents the investment banking interests of the major European and international banks and securities firms which are active in the London wholesale markets. Subscriptions from these firms are LIBA's only source of funding. LIBA makes public representations to the EU institutions in relation to all aspects of EU legislation which affect our Members' business. It is worth noting that LIBA's work also involves making representations to other international bodies (e.g. Basel Committee and IOSCO), and Member States and other national authorities, as well as banking and securities supervisors.

1. Scope of the consultation

LIBA welcomes the Commission's consultation on the Code of Conduct for Interest Representatives. Interest representatives play a key role in the democratic process of EU policymaking. The Commission 21st March 2007 Follow-up to the Green Paper on the European Transparency Initiative (COM(2007) 127 final) raises important questions about the responsibilities of interest representatives, and specifically, how the proposed register of interest representatives would operate, such as the operation of the complaints procedure and adjudication of breaches of the Code. We comment on these points in greater detail in section 4 below. We think that these points need further clarification, explanation, and discussion before the proposed register and Code can operate effectively, and we ask the Commission to consult on them.

2. Status of LIBA, and its Members, as interest representatives

For the purposes of this consultation, we assume:

- (i) that LIBA would be treated in the register as a trade association, and
- (ii) LIBA Members would fall into the category of 'in-house lobbyists'.

3. Code of Conduct

Principles:

We have no particular comments on the principles.

Rules:

1. "identify themselves by name and organisation". The code should apply to the trade association or firm concerned, which should be the only entity that registers. It

should be the responsibility of the trade association or firm to use reasonable endeavours to ensure that its staff comply with the Code.

2. “declare the clients and the interests they represent”. It should be sufficient for a trade association to make a general declaration of the type of firms it represents. In the case of LIBA, a list of Members is publicly available on our website. So far as Member firms are concerned, the interest that in-house lobbyists serve is the firm itself, so there should be no need for disclosure under this heading.

3. “ensure that information provided to the EU institutions is accurate, complete and up to date to the best of their knowledge”. We think that it would be better to provide that information should not be misleading, rather than that it should be ‘complete’.

Other provisions :

“Breaches of the Code: Registrants are informed that breaches of the above rules may lead to suspension or exclusion from the Register”. There are a number of unanswered questions relating to how alleged breaches of the Code should be handled: see our comments in section 4 below. The Commission should make the investigation process clear, for example how it would ensure that alleged breaches are properly investigated and decided, and what provisions there would be for appeal. Suspension or exclusion from the register should not be the only sanction available. We consider that further consultation is needed on these issues.

“Complaints: Signatories should be aware that the citizens have the possibility to lodge a complaint about a suspected breach of the rules set out in this Code.” The Commission should also make clear that only legitimate complaints may lead to sanctions being taken. It is vital to protect interest representatives, who are an important part of the policymaking process, from bogus or malicious complaints. It is therefore essential to have a clear formal procedure for dealing with complaints.

“Publications of contributions and other documents”. We do not understand why the Code, which is about the obligations of interest representatives, not the procedures of the European institutions, should refer to the procedures for public consultations.

“Contributions to public consultations will be published on the internet together with the identity of the contributor, unless the contributor objects to publication of the personal data on grounds that such publication would harm his or her legitimate interests”. We assume that the exclusion from publication would cover any circumstances where there are legitimate grounds to request confidentiality, for example because of the commercial confidentiality of the information. The Commission should make clear if it intends a narrower exclusion. Furthermore, it is vital, if an interest representative does request confidentiality, and if the Commission is concerned that the reasons for confidentiality are not valid, that it does not proceed to publish without discussing the matter with the interest representative.

On the subject of consultation, the Commission’s March 2007 Follow-up to the Green Paper detailed measures that it intended to take to improve the Commission’s standards of consultation, including training and awareness raising, sharing of good

practice, and consultation templates. We ask the Commission to provide information on the progress it has made in implementing this programme of measures.

4. Other aspects of the registration scheme

As noted in our comments above on the “Other provisions” in the Code, we think there are other aspects of the registration scheme on which the Commission should consult on the basis of a fuller explanation of how the scheme would operate.

In particular, the Commission should explain the following aspects of the operation of the proposed procedure for complaints about, and the adjudication of, breaches of the Code:

- How it would guard against bogus or misleading complaints;
- How it would investigate alleged breaches of the Code;
- How it would be decided whether or not an interest representative had breached the Code;
- What provision there would be for an interest representative to make representations to the Commission in relation to a complaint, or to appeal against a decision that it had breached the Code.

The Commission proposes that if an interest representative has been suspended or excluded from the register, its “submissions will be considered as individual submissions”. It would be inappropriate for the Commission to devalue the opinions of interest groups in this way solely because they were not included in the register. The aim of all EU public policy should be to arrive at the best quality legislation and regulation, taking account of the interests and opinions of those affected by it. Provided it is apparent what interest is represented by the representative, Commission officials should have the discretion to use their judgement in evaluating the representation. Automatic devaluation of validly representative opinions would deny the Commission the benefit of expert advice, and tend to result in sub-optimal regulation that could damage the interests of the European Union.

For the same reason, it is also important not to exclude or devalue the views of firms that have not registered, for example because they do not have a dedicated ‘in-house lobbying’ function, or because their interest representation activity is not significant enough for them to be aware of the registration scheme, or because their expenditure on interest representation is below de minimis levels.

5. Financial disclosure

The Commission is right to expect trade associations and ‘in-house’ lobbyists to disclose only an estimate of the cost associated with the direct lobbying of EU institutions. Trade associations exclusively represent the interests of their Members. ‘In-house’ lobbyists exclusively represent their firm. In each case, there is therefore complete transparency about the interest that they represent. LIBA’s work involves making representations to other international bodies, and Member States and other national authorities, as well as EU institutions. It is therefore not practicable for any more than a rough estimate to be given of the cost associated with direct lobbying of EU institutions, and this should be sufficient for the purpose. We expect that the same considerations would arise in relation to the ‘in-house lobbying’ activities of our

Members; in addition, for many firms, the relevant staff may also be responsible for other activities unrelated to lobbying in a way that means that only rough estimates of cost are possible.

6. Inter-institutional cooperation

We think it would be reasonable, in order to avoid requiring interest representatives to subscribe to more than one register and more than one code of practice, for the European Commission and European Parliament to agree a common approach, as suggested in the March 2007 Follow-up to the Green Paper, before continuing discussions with the industry on this Code.