



CESR
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Consultation
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Proposal for a Pan-European Short Selling Disclosure Regime

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks. FBF member banks have more than 25,500 permanent branches in France. They employ 500,000 people in France and around the world, and serve 48 million customers.

The FBF welcomes the consultation of the CESR on its proposal for a Pan-European Short Selling Disclosure Regime and strongly supports that the divergences in supervisory approaches should be addressed, at least within the EU, towards restrictions of short selling activity under exceptional market conditions and for specific sectors.

PRELIMINARY STATEMENTS

The FBF would like to stress out the most important points here below:

- we consider that the nature of rules about short selling must be different in current period and in period of crisis, and a specific study must be done in this case;
- we do support a fully harmonised disclosure regime within Europe, in particular the definition of “market making”;
- we do support a private disclosure reporting but not a public one;
- we consider that the reporting should be exclusively addressed to the home regulator (the national relevant authority should be the addressee of all short selling reporting regarding securities traded both on national regulated markets/MTF and on EU markets);
- the trigger threshold should be 1 %;
- the timeframe for disclosures should be T+2 as T+1 is too short to enable firms to report adequately, in large groups with several trading locations.

Responses to CESR's questions

1. Do you agree that enhanced transparency of short selling should be pursued?

No, the FBF would rather call for more convergence on the rules themselves (e.g. settlement rules), ideally at an international level.

2. Do you agree with CESR's analysis of the pros and cons of flagging short sales versus short position reporting?

Yes, the FBF agrees with CESR's analysis and we do prefer short position reporting. As stated above, the reporting obligation should be addressed to the final investor who might be a natural person, a management company or a financial intermediary which negotiates on its own account.

3. Do you agree that, on balance, transparency is better achieved through a short position disclosure regime rather than through a 'flagging' requirement?

Yes, the FBF do agree.

4. Do you have any comments on CESR's proposals as regards the scope of the disclosure regime?

The FBF agrees with the scope.

Only short positions creating an economic exposure to share should be included and only concerning stocks listed on a EEA market. Regulated markets, MTF and internalisers should be included into the scope and the restrictions must be applicable not only to financial stocks but to all sectors.

5. Do you agree with the two tier disclosure model CESR is proposing? If you do not support this model, please explain why you do not and what alternative(s) you would suggest. For example, should regulators be required to make some form of anonymised public disclosure based on the information they receive as a result of the first trigger threshold (these disclosures would be in addition to public disclosures of individual short positions at the higher threshold)?

No, the FBF would support a regime which only sets a disclosure obligation to the relevant regulator. Disclosure to the public has several downsides such as the hedging effect, the short squeeze

Besides, the FBF considers that the reporting has to be done at an aggregated level for all reported short selling in a specific equity.

6. Do you agree that uniform pan-European disclosure thresholds should be set for both public and private disclosure? If not, what alternatives would you suggest and why?

The FBF supports threshold setting only for private disclosure.

7. Do you agree with the thresholds for public and private disclosure proposed by CESR? If not, what alternatives would you suggest and why?

No, the FBF considers that the proposed thresholds are too low and suggests that the trigger threshold should be set at least at a level equal to 1%.

In addition, we strongly support the idea that CESR should make available in its website the list of all the public companies listed on all the EEA markets, including the capital, in order to have a single data basis available for all the market firms and helping them in determining the denominator in the calculation of the net economic exposure in %.

8. Do you agree that more stringent public disclosure requirements should be applied in cases where companies are undertaking significant capital raisings through share issues?

No, the FBF believes it is difficult to manage several thresholds.

9. If so, do you agree that the trigger threshold for public disclosures in such circumstances should be 0.25%?

No, the FBF do not agree.

10. Do you believe that there are other circumstances in which more stringent standards should apply and, if so, what standards and in what other circumstances?

No, the FBF believes that one discipline should be addressed for all market activity, therefore, hence, there will be no doubts regarding which threshold must be met.

11. Do you have any comments on CESR's proposals concerning how short positions should be calculated? Should CESR consider any alternative method of calculation?

The FBF considers that each group should be asked to draft a policy which will define and justify the way positions are calculated and netted. This policy will be available to the regulators on their request.

Besides, the FBF agrees with CESR's proposal about the method of calculation: the position should be calculated taking into consideration a net basis and regarding derivative and cash positions on a Delta-adjusted basis.

12. Do you have any comments on CESR's proposals for the mechanics of the private and public disclosure?

Yes, the FBF agrees with the proposal as email is a fast and safe mean.

13. Do you consider that the content of the disclosures should include more details? If yes, please indicate what details (e.g. a breakdown between the physical and synthetic elements of a position).

No, the FBF considers that the proposed set of information contains all relevant details.

14. Do you have any comments on CESR's proposals concerning the timeframe for disclosures?

No, the FBF believes that t+1 is too short to enable firms to report adequately, in large groups with several trading locations. T+2 would be more realistic.

15. Do you agree, as a matter of principle, that market makers should be exempt from disclosure obligations in respect of their market making activities?

Yes, the FBF supports their exemption from disclosure obligations but there is a need for a clear definition of what the market making activity is in this context.

Indeed, during the last quarter of 2008, we observed that regulators within the EEA did not define market making the same way, and these different definitions created a lot of confusion and uncertainty.

The FBF suggests that market making in this context should be the activity consisting in "exposing bids and asks on a regular basis and according to an agreement signed with the

exchange and/or the issuer” (liquidity provider agreement, market making agreement, “contrats de liquidité” ...). There is also a need to define, within the market making, how the exemption applies (by portfolio? by desk?).

16. If so, should they be exempt from disclosure to the regulator?

Yes, the FBF believes so.

17. Should CESR consider any other exemptions?

No comment

18. Do you agree that EEA securities regulators should be given explicit, stand-alone powers to require disclosure in respect of short selling? If so, do you agree that these powers should stem from European legislation, in the form of a new Directive or Regulation?

Yes, the FBF agrees with this proposal which meets our expectations of harmonisation among EU members.