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Carlo Comporti
Committee of European Securities Regulators (CESR)
7-11 avenue de Friedland
75008 Paris
France

Paris, 20 January 2009

Dear Mr Comporti,

The Association Française de la Gestion financière (AFG)¹ welcomes CESR's call for evidence regarding short selling.

1. AFG's general Comments

¹ The Association Française de la Gestion financière (AFG)¹ represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 409 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing 2500 billion euros in the field of investment management, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with nearly 1500 billion euros managed from France, i.e. 22% of all EU investment funds assets under management), wherever the funds are domiciled in the EU, *and second at worldwide level after the US*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

First of all, let's recall that in general investment fund managers do not use short selling, either because it is not part of their usual management techniques or because they face regulatory prohibitions for doing so.

However, considering the current decisions taken by various national jurisdictions around the world regarding short selling, French asset managers are currently facing practical difficulties when trading on different national marketplaces (for instance on behalf of international equity funds):

a) Wide variety of definitions

- national definitions of what 'short selling' is differ widely from one country to another (even within the EU). In any case we consider that acquiring shares, including through what is improperly called "borrowing", for selling them on the market, is not short selling as such. This interpretation is shared by many national regulators but not by all of them across Europe;
- but international equity fund managers have, by definition, to deal at the same time with several national share trading regulations. If the meaning of 'short selling' is not the same from one country to another (even within the EU), it is practically very difficult for managers to be legally sure that they comply with all national regulations as the meaning of what 'short selling' is varies for each country;
- from this perspective, we ask CESR to make sure – for the sake of legal certainty for investment managers - that in particular the interpretation we support above in the case of securities borrowing is made applicable across the EU.

b) Wide variety of rules

- it is also very difficult for investment managers to follow all the national short selling rules themselves as these rules are not the same from one jurisdiction to another, for instance regarding the types of securities concerned (e.g. applicable only to financial corporates or not, etc.), and may change from one day to another;

c) Consequent risks of arbitrage and legal prosecution

- if the same security is listed on several markets, any discrepancy in short selling definition or restriction might lead to price arbitrage, which might be destabilising for the price of the related company shares. It would harm the good functioning of financial markets;
- if definitions and restrictions regarding short selling vary from one jurisdiction to another, market participants trading on many different national markets are at legal risk as it is very difficult for them to get all the national discrepancies from abroad.

In any case, the current trends on national financial markets in the EU show that short selling restrictions did not prevent share prices to go down in recent months.

So is it so useful to provide for short selling restrictions?

For instance continental Europe lived with short selling for decades, without any harm. The crucial issue to prohibit and to prosecute is not short selling as such, but market abuse (under the form of market manipulation) which could arise – and which has not at all to be confused with short selling. In the vast majority of cases, short selling does not constitute market abuse and, on the contrary, may bring useful liquidity to the markets.

If finally CESR members decide to continue providing for short selling restrictions – even though we think such measures are not only inefficient but even harmful for market liquidity – then the crucial issues to solve are the ones of:

- harmonising:
 - o short selling **definition**
 - o short selling **restrictions**
- ensuring the practical **on-going coordination** if restrictions have to be modified across the EU, with justifications for definitions and relevant restrictions
- **centralising the information on CESR's website** in a clear manner in order to give an easy access to such information for market participants.

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If you need any further information, please don't hesitate to contact myself at +33 1 44 94 94 29 (p.bollon@afg.asso.fr) or our Head of International Affairs Division, Stéphane Janin, at +33 1 44 94 94 04 (s.janin@afg.asso.fr) .

Sincerely Yours,

Pierre Bollon