

January 22, 2009

By electronic mail: www.cesr.eu

The Committee of European Securities Regulators (CESR)
11-13 Avenue de Friedland
Paris, France 75008

RE: CESR Call for Evidence of Short Selling by CESR Members; Ref. CESR/08-1010

Ladies and Gentlemen:

Bloomberg Tradebook Europe Limited (“**Bloomberg Tradebook**”)¹ appreciates the opportunity to respond to CESR’s Call for Evidence of Short Selling by CESR Members, dated December 19, 2008 (the “**Call for Evidence**”). We welcome CESR’s timely consideration of this topic, and we particularly applaud the recognition of the utility of encouraging a harmonized approach amongst CESR Members. A consistent short selling policy throughout the European Union with a single list of affected securities would facilitate compliance for firms operating on a pan-European basis and ensure the same levels of protection among all E.U. investors. The recent multiplicity of rules have required firms to ascertain for each regulator publishing short selling rules: the scope of the rules (which securities are affected and in which jurisdictions/on which markets they are traded); the effect of the rules (ban on all short sales, naked shorts only or extending current position only and/or reporting requirements); the type of trading entity affected (brokers, investment managers, holders) and the reporting requirements. This very difficult task is rendered almost impossible by the ad hoc way in which new sets of rules and changes to existing rules have been announced, the speed at which changes were announced without consultation and the difficulties in interpreting the rules.

A critical part of harmonizing short sale rules would include providing greater clarity and fairness regarding when an agency broker dealer should be held responsible for the actions of its clients. Agency dealers will not typically know about the overall positions of their clients, nor will they be in a position to prevent their clients taking post-trade actions which could result in a

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short position (e.g., where a selling client fails to deliver). We believe the goals of the short sale policy would be best advanced if the parties that take the investment decision to enter into net short positions be held accountable in terms of reporting short positions above a threshold percentage (as is the case in the United Kingdom at present), if such a rule is contemplated. Similarly firms which sell stock but fail to settle their trades should come under regulatory scrutiny, as would be the norm for insider trading or other securities violations. Agency brokers should only be held to take reasonable steps to mitigate short sell violations by their clients, such as by marking sales short or long.

We respectfully recommend that CESR consider whether it would be appropriate for one Member State's short sale rules, or even a pan-European rule, to extend to trades effected on non-E.U. markets by persons not located in the European Union. We suggest that enforcement of such extra-territorial applications would be difficult in any event, and might well run afoul of well-established legal limits on extraterritoriality. Imagine, for example, if a non-E.U. government tried to regulate conduct by E.U. persons taking place wholly in E.U. markets. Would that be appropriate? Should persons in the E.U. have to comply with possibly inconsistent bodies of regulation imposed by non-E.U. governments in connection with trading in the European Union? We think those issues deserve CESR's analysis and respectfully request that CESR explore the balance between these conflicting and legitimate interests. Allowing such expansive exercise of jurisdiction imposes complex duties on investment firms that are trying to comply with all applicable laws and the very difficulty of actually enforcing laws at such an outer extreme may demonstrate that such an approach is unwise and unworkable. It may be that antifraud jurisdiction should be as broad as possible, and that reporting obligations as to the acquisition of significant share positions should apply regardless of the location of the acquiring party, but that the assertion of regulatory jurisdiction over trading practices should be more limited. We believe these are issues that deserve CESR's attention.

We appreciate the opportunity to make our views known to CESR and would welcome the opportunity to discuss this Call for Evidence. Please contact me at +44 20 7330 7314 or by email at dconte2@bloomberg.net should you wish to discuss our response further or have any additional questions or comments.

Respectfully submitted,

Daniel Conte by R.D.B.