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Date
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Mr Kurt Pribil
Short Selling Task Force
CESR – Pol
CESR

Submission online
'Consultations' at www.cesr.eu

Dear Mr Pribil

CESR/09-581: CESR Proposal for a Pan European Short Selling Disclosure Regime

M&G has been looking after savers since 1931 and now has £23bn of retail funds under management and more than 600,000 investors. Since May 1999 M&G has been part of the Prudential Group and now has responsibility for the management of all of Prudential's assets in the UK and Europe. Total assets managed by M&G are thus some £149bn covering Institutional, Retail and Life and Pension clients.

We welcome the work undertaken by CESR to bring some degree of convergence to the numerous standards member states are currently applying to short selling. Along with many other investors, we are concerned at the negative impacts of and confusion surrounding the differing requirements currently in place across Europe and indeed the globe.

Short selling is an established investment activity which provides an efficient means of effecting active investment and risk mitigant strategies, as well as increasing market liquidity and reducing transaction costs.

It is our view that the key regulatory driver behind short selling disclosure standards arose out of the extreme market turbulence of 2008, the concomitant threat to financial stability and risk of disorderly markets and market abuse. With this backdrop there are a number of headline concerns we have with the proposals. Firstly, disclosure in itself will not address the cause of market abuse and we feel that greater regulatory focus should be applied to how rules around market abuse are operated and applied.

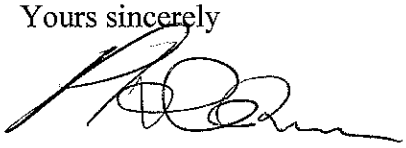
Secondly, a disclosure regime needs to be carefully designed to apply equally to all market participants and in a consistent fashion. As we outline in our response below, we feel there are pre-existing structural issues which will impact the effectiveness of

these proposals, namely the increasingly fragmented nature of global markets and longstanding "Market Maker" exemptions.

Finally, we would raise a concern regarding the ability of these proposals to change the current confusion that reigns in this area of regulation. Without a pan-European legislative framework, there will be ongoing legal and operational risks. Furthermore, as many asset managers operate globally, we would also highlight the importance of coordinating any European actions with global developments.

We would be happy to discuss any of our answers to the questions below.

Yours sincerely



Patrick Osborne
Senior Manager Compliance
M&G Investment Management

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Summary questions raised in this paper

Q1 Do you agree that enhanced transparency of short selling should be pursued?

In principle yes but would want any proposals to focus on reducing true market abuse and deliberate failed trade activity by market participants. Whilst public disclosure is necessary, it should be designed to apply equally to all market participants in order to ensure there is a level playing field for all.

Whilst we are supportive of additional transparency around short selling and the benefits this would bring to identification/monitoring of abusive behaviour, any regime should be designed in a manner which minimises any impact on market liquidity and accuracy of price formation. As alluded to in our opening statement, market fragmentation will continue to be causal to continued information asymmetry under these proposals, the view that public disclosure will bring with it the benefit of better price discovery is not clear cut, given that banks will continue to have the ability to disclose in a number of regulated markets and MTFs, leading to price indicatives which can vary across these venues.

Notwithstanding this, we would not oppose the regulator publishing an aggregated, anonymised and suitably delayed gross short exposure positions.

Q2 Do you agree with CESR's analysis of the pros and cons of flagging short sales versus short position reporting?

Yes it would be operationally complex to go down the flagging route, despite the transparency benefits it might bring.

Q3 Do you agree that, on balance, transparency is better achieved through a short position disclosure regime rather than through a 'flagging' requirement?

On balance yes. The flagging route would most likely require a manual flagging, bringing with it the increased risk of human error and it would not cover OTC markets, leaving the approach open to gaming.

Q4 Do you have any comments on CESR's proposals as regards the scope of the disclosure regime?

We agree that the disclosure regime should apply to all sectors and all securities and exclude non EEA issuers which only have secondary listings in EU regulated markets.

Furthermore, we are concerned about how these disclosure obligations would apply to investors outside the EEA, taking short positions in listed equities. An ability to do this outside the regulatory jurisdiction of European regulators would, in our view, undermine these proposals. One suggestion is that we apply the disclosure requirements to borrowers engaged in securities lending, as a means of providing the data required to flush this out.

Q5 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)?

Whilst both parties agree on the proposed private threshold, we do have divergence on the public disclosure threshold, which is viewed by some as overly draconian and will result in excessive over reporting. These parties have suggested a more proportionate public threshold would be 1%.

Q6 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 inconsistent regimes across Europe have presented asset managers with a number of problems and accordingly we support any work which will help to establish a consistent disclosure methodology.

Q7 Do you agree with the thresholds for public and private disclosure proposed by CESR? If not, what alternatives would you suggest and why?

Again, as stated in Q5, we have divergent views, some would accept these proposals as written, whereas others would widen the public reporting threshold and include disclosure of securities lending activity ***by the borrowers****.*

Q8 Do you agree that more stringent public disclosure requirements should be applied in cases where companies are undertaking significant capital raisings through share issues?

We agree. Furthermore, certain groups with M&G have said that this is another reason why they would want the disclosure regime to include lending activity, given the increased risk of abusive behaviour around such events. This would equally be relevant for M&A activity. As alluded to in our earlier answer to question 4, disclosure of lent positions (by the borrower) would, in their view, help to identify shorting by investors which may sit outside the jurisdictional scope of the regime.

Q9 If so, do you agree that the trigger threshold for public disclosures in such circumstances should be 0.25%?

Yes

Q10 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?

Please refer to our answer to Q8.

Q11 Do you have any comments on CESR's proposals concerning how short positions should be calculated? Should CESR consider any alternative method of calculation?

We agree with short positions being calculated on a net basis and for option exposures to be delta adjusted.

Whilst there may be some ambiguity around how one identifies "economically equivalent" positions" in a share, where this might be achieved through shorting an index, we believe this could be addressed elsewhere in our response by inclusion of lending activity as articulated in our answer to question 7 above.

Q12 Do you have any comments on CESR's proposals for the mechanics of the private and public disclosure?

No comments.

Q13 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 comments.

Q14 Do you have any comments on CESR's proposals concerning the timeframe for disclosures?

Given that many synthetic contracts can be closed out ahead of settlement, realising the profit from a position before disclosure might be required, we would recommend disclosure on trade date itself.

Q15 Do you agree, as a matter of principle, that market makers should be exempt from disclosure obligations in respect of their market making activities?

No. Historically a true "Market Maker" was a jobber performing the pure role of risk provision and liquidity for trade facilitation, contributing to the orderly functioning of markets. Nowadays, global integrated banks operate these pure "Market Maker" activities alongside those of prop desks and service provision to hedge funds. These banks still use the "Market Maker" exemption despite these clearly conflicting activities. Our view is that this exemption and the definition of "Market Maker" needs to be revisited and clarified, in order to ensure that the exemption is available only to those banks which are not conflicted in this way.

Q16 If so, should they be exempt from disclosure to the regulator?

No, we believe market makers should be obliged to disclose their positions to regulators, the same way as all other market participants. Indeed, we fail to see the logic of exempting them from private disclosures.

Q17 Should CESR consider any other exemption?

No comments

Q18 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?

We agree.