

Committee of European Securities Regulators
11-13 avenue de Friedland
75008 PARIS
FRANCE

Subject: Eumedion response to CESR's Proposal for a Pan-European Short Selling
Disclosure Regime (Ref: CESR/09-581)
Ref.: 2009.051
Schiphol, 18 September 2009

Dear Sirs, dear Madams,

Eumedion would like to thank CESR for the opportunity to comment on CESR's consultation paper on its proposal for a pan-European short selling disclosure regime.

By way of background, Eumedion is the Dutch corporate governance forum for institutional investors. At present, Eumedion has 65 Dutch and foreign institutional investors as members. Together these members have more than 1 trillion euro of assets under management. They invest for Dutch beneficiaries and in listed companies worldwide.

Instead of answering all specific questions raised in the consultation paper, we would like to give some general comments on the issues raised by CESR.

1. Eumedion concurs with CESR that, in general, short selling contributes to efficient price discovery, increases market liquidity, facilitates hedging and other risk management activities and can possibly mitigate market inconsistencies (section 12 of the consultation paper). Only in very specific circumstances, short selling can be problematic.
2. Because of the unusual and extraordinary circumstances on the financial markets in the autumn of 2008, Eumedion supported for example the measures taken by the Governments and financial regulators to calm the financial markets, including temporarily prohibiting any party from effecting a short sale in the publicly traded securities of financial institutions. There was a possibility that many parties simultaneously 'went short' in financial stocks, thereby

creating a self-fulfilling prophecy: as a result of the increased supply, the prices will fall automatically.

3. Other 'problems' with short selling, for example selling shares short and subsequently floating unjustified rumours about an unsustainable overvaluation in the market, should be solved by existing instruments against market manipulation and by more disclosure (a new instrument). More disclosure can also be a solution for another problem with short selling: the situation that an investor has substantial voting rights, but a negative net economic position. If this investor is, for example, trying to block a legal merger or a takeover that would be in the interest of the company and its shareholders in the long term, the incentives of this specific investor are not aligned with the incentives of the long term shareholders and will send out distorted price signals. Therefore, we generally support CESR's initiative to propose a pan-European short-selling disclosure regime.

4. We are of the opinion that in general the public disclosure regime should not differentiate between long and short positions. Just like short positions, a 'long investor' can have an incentive to float unjustified rumours about the company. Moreover, only with a significant short position (which is larger than his long position), the investor can have an incentive not to vote in the interest of the company and its shareholders in the long term, but to vote in such a way to destroy market value. Therefore, we think that the first threshold for public disclosure of short positions should be identical to the first threshold for public disclosure of long positions as information about such a large short position is relevant for all financial market players. As a result, we do not agree with CESR's proposal to make a short position of 0.5% of the company's issued share capital public. We think that with such a small threshold, the public notifications would not generate meaningful information for the financial market players; a low threshold can support securities regulators to detect possible market manipulation (see also point 5 below), but such notifications are not important and informative for all financial market players. Moreover, with such a low first threshold – resulting in a large flow of notifications – it may be possible for financial market players to detect the investment strategy of a specific investor. Illustrative in this respect is the announcement that several US self-regulatory organisations (SRO's) are publishing on their websites *on a one-month delayed basis* information regarding individual short sale transaction in all exchange-listed equity securities. Moreover, as we are in favour of an exact mirror of the disclosure obligations that already exist for long positions, we are also in favour of a gross short position disclosure regime. For example, if a financial market party discloses a gross 3 per cent long position – based on national legislation – it is from a shareholder's point of view also important to know whether this exposure is completely or partly offset by a gross short position. We are of the opinion that public disclosure of short positions should be enforced by

the Transparency Directive (in stead of proceeding with a new Directive or regulation as proposed by CESR). As a result, market makers would be exempted from the public disclosure obligations.

5. In order to support securities supervisors to detect possible market manipulation by short selling, we can understand that securities supervisors would like to have more detailed information about short positions. Therefore, we would not object to a 'private' disclosure regime starting with a lower threshold than the public disclosure regime. However, CESR's proposal to set the first private disclosure threshold at 0.1% of the company's issued share capital is, from an administrative burden point of view, too low. We would like to suggest starting with a threshold of 0.25%, like in the UK. We are of the opinion that private disclosure of short positions should be enforced by the Market Abuse Directive (in stead of proceeding with a new Directive or regulation as proposed by CESR).
6. We support CESR's view that uniform pan-European disclosure thresholds should be set for both public and private disclosure. A harmonised set of rules will save institutional investors with their highly diversified investment portfolio a lot of compliance costs, risks and agitation. Differences between disclosure thresholds within the European Union would lead to additional increases in the administrative burden as institutional investors would have to make costs to monitor the regulatory developments in the various Member States and would have to adopt their internal compliance systems of to implement temporary compliance measures involving manual monitoring.
7. CESR proposes that disclosures should be made ultimately at the end of the trading day following the day on which the disclosure obligation is triggered (i.e. T+1). We doubt that such a tight timeframe is workable for institutional investors that have outsourced the management of their investments to a number of different asset managers. Collecting data from these asset managers, calculating the positions and notifying the securities regulator will take probably considerably more time than one trading day.

If you would like to discuss our views in further detail, please do not hesitate to contact us.

Yours sincerely,



Rients Abma

Executive director