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CESR,

11-13 avenue de Friedland,

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Dear Sirs,

CESR Proposal for a Pan-European Short Selling Disclosure Regime

The Investor Relations Society (www.irs.org.uk) much appreciate the opportunity to comment on your current consultation on short selling, and applaud your leadership in trying to establish appropriate and common short selling regimes in the EU.

The Society represents members working for public companies to develop effective two way communication with the markets and create a level playing field for all investors. It has 600 members drawn both from the UK and overseas, including the majority of the FTSE 100 and much of the FTSE 250. The UK Society is also a member of the Global Investor Relations Network.

Introduction

In our view, short selling is a legitimate activity which, among other benefits, provides liquidity in companies' issued shares and aids accurate price formation. However we also take the view that short selling is open to potential market abuse, which should be eliminated. The most effective deterrent to this is disclosure.

We believe that public companies and the wider market should have full and unrestricted access to information on who owns and can influence a company's shares - whether the positions are long or short. Those responsible for investor relations at their companies “engage” with investors; knowledge of who those investors are is clearly essential. Companies of course will differ in their approach as to *whether* to engage with short sellers or not, but they should be able to make that informed choice.

For that reason, the Investor Relations Society is happy to support the 2 tier disclosure principle, BUT on the condition that the lower level disclosure also be made to the company on an inside information basis to assist in the process of communication with investors.

Principles.

As you no doubt recall, in May IOSCO conducted its own consultation on short selling. It proposed several ‘principles’; we thought it helpful to reaffirm our support for these principles.

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1. First Principle. "Short selling should be subject to appropriate controls to reduce or minimise the potential risks that could affect the orderly and efficient functioning and stability of financial markets."

As noted above, our members believe that short selling plays a useful role in relation to companies' shares. Consequently we support the creation of an appropriate regime, with appropriate disclosure, that supports it.

2. Second Principle
" Short selling should be subject to a reporting regime that provides timely information to the market or to the authorities."

We agree with this, and with the underlying purpose of achieving orderly markets, free of market abuse. However we believe that companies should be able to know who owns or can influence their shares. We note that there are significant differences in the current disclosure regimes applicable to long positions, which should also be addressed. Various member states have a system of proactive identification (provided for example in the UK for example through Section 793 of the Companies Act 2006); other member states do not, which does not provide for a level playing field for companies.

Further we note that this system of proactive disclosure does not currently extend to synthetic ownership, in the form of Contracts for Difference, equity swaps, and other derivatives.

We would encourage CESR to take the disclosure of long positions into account, when considering those of short positions.

Thank you again for the opportunity to contribute.

Yours sincerely,

Mark Hynes,

Director, and Chair, Policy Committee

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LIST OF CONSULTATION QUESTIONS. We have restricted our answers to those questions relevant to our members.

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

Q2 Do you agree with CESR's analysis of the pros and cons of flagging short sales versus short position reporting? ***Yes. An aggregated view does not allow companies insights into who owns their shares.***

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

Q4 Do you have any comments on CESR's proposals as regards the scope of the disclosure regime? ***Market making should be exempt from this disclosure. To include them would serve to confuse, not inform, the market.***

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)?
The Investor Relations Society supports the concept of a 2 tier disclosure regime, provided that the lower tier disclosure be made to the company as well as to the regulator. We have consistently argued – for example in discussions around disclosure by holders of CFD positions – that issuers of shares should have a prime facie right to know who owns or can influence their shares.
They should be able then to choose whether to engage with their holder of those positions. We believe that by raising the market reporting threshold to 0.50%, the concerns of investors in regards to their investment strategies being revealed will be addressed.

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? ***Yes. The market is increasingly integrated – especially with MLTF's offering a pan European execution service, so to distinguish between different countries' reporting regimes would lead to a 2 tier market.***

Q7 Do you agree with the thresholds for public and private disclosure proposed by CESR? If not, what alternatives would you suggest and why? ***The Investor Relations Society has been consistent in arguing for public disclosure at a 0.50% threshold.***

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? ***Yes.***

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

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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? ***No.***

Q12 Do you have any comments on CESR's proposals for the mechanics of the private and public disclosure? ***The existing regimes for disclosure of long positions by investors are in place and already function well. Those should be used.***

Q14 Do you have any comments on CESR's proposals concerning the timeframe for disclosures? ***We believe that the timeframe should use that of the Market Abuse Directive - 'as soon as possible' - to be consistent with the disclosures required of public companies.***

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? ***Yes, again for consistency with disclosure of long positions.***

Q16 If so, should they be exempt from disclosure to the regulator? ***No, provided the regulator had appropriate skills and systems in place to distinguish between positions built for different purposes.***

Q17 Should CESR consider any other exemptions? ***No.***

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? ***Clarity on disclosure rules is always essential; rather than a new specific regulation, would it not be simpler to adjust the provisions of the Transparency Directive?***