Response to CESR consultation on a proposal for a Pan-European Short-selling Disclosure Regime.

We have considerable difficulty responding to this paper as the objectives seem unclear and muddled. We quite accept that, to prevent disorderly markets and to identify market abuse, the disclosure to regulators of short positions and the exchange and aggregation of this data by the competent authorities are practices we would support.

Where we depart from the position of this paper is in its assertion that the public disclosure of individual positions would "provide a potential constraint on aggressive large-scale short-selling." There is no definition of what is meant by "aggressive short-selling" and it is unclear to us why that should be disclosed when the liquidation of long-only positions is not. They have the same, or similar, economic effects. Moreover, we explain below how such a public disclosure regime can be damaging to the long-term engagement of a mainly long-only asset manager, such as Fidelity, with companies in which it invests.

We are strongly of the view that whatever disclosure is given to regulators the data should remain with them and similar competent authorities and should not be disclosed on an individual basis except in exceptional circumstances.

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

We broadly agree that enhanced transparency of short selling should be pursued. As a firm we understand that short selling can be a bona fide investment tool which has an appropriate place in the range of instruments and strategies available to an investor. We also believe that, when used appropriately, short selling can make markets more efficient. However, we are aware that the practice, in certain instances, could lead to market abuse and so we would support actions to identify and protect the market from abusive behaviour.

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

We broadly agree with CESR's analysis in this respect especially in relation to a multi-manager fund management firm like ours where a flagging system would be relatively costly and inefficient.

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

A short position disclosure regime where a position is calculated across a variety of instruments in a particular stock would, in our opinion, provide regulators and market participants with superior information in relation to short positions.

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

We support the broad scope of the proposals in that we agree that they should apply to shares listed on an EEA regulated market of EEA incorporated companies, together with any instruments whose price is derived directly from the aforementioned shares. We are also supportive of the proposal that such a regime should not apply to instruments such as bonds and notes issued by such companies. As such we would suggest that the scope of the disclosure requirements be aligned with those of the Market Abuse Directive.

We feel also that more detail is needed as the scope of reporting of "short" selling. If the target is potential market abuse it would need to cover options and CFDs. There will be problems in the reporting of both of these. For options, their dynamic nature would make reporting difficult: for CFDs, there would be a danger of double counting if both sides were to report. The authorities will also have to care to capture other instruments which have the economic effect of short-selling.

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)?

We do not support a two tier disclosure model. We believe competent authorities should have access to information on short-selling, but we do not believe there is any case for the public disclosure of individual positions except in exceptional circumstances.

The disclosure of short positions is not a mirror image of disclosure of long positions. The latter are disclosed to the market, not on the grounds of market behaviour or monitoring abuse, but because of the implications for control of the company. No such considerations apply to the disclosure of short positions.

Moreover, as a mainly long-only manager which aims to engage positively with companies we invest in, the disclosure of a short position in an investee company, which might be taken for tactical reasons, or for short-term rebalancing, can damage that relationship. We can see no public policy reasons for the individual disclosure to the market of short positions at any level.

If "aggressive short-selling" is proving damaging, regulators have tools to constrain it. Disclosure to the public is the wrong answer.

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?

We agree with the concept of common pan-European disclosure thresholds.

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

We believe that the level for reporting to regulators should be 0.25%. If anonymised aggregated data is reported by the regulator on a delayed basis, the trigger level should be 1%. If despite our arguments against individual public disclosure that is introduced, the level should again be 1%. We would propose these levels for net or gross reporting. The reason for suggesting these levels is that we believe a balance has to be struck between accruing meaningful data but not setting the level for any form of public disclosure which would itself cause a market disruption.

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 are not convinced by the arguments for more stringent disclosure requirements relating to companies undertaking capital raising. Our view is that since the purpose of these regulations

is to mitigate the risks posed to orderly markets and/or market abuse, the regulations as applied to other stocks should be sufficient for this purpose when applied to companies raising capital.

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

No (following on from our response to Q8).

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?

None.

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 do have concerns about the reporting of net positions only. For large fund managers reporting net positions when they hold large long only positions would be misleading to the authorities and would not give regulators the view of the market they seek.

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

We agree with the mechanism to inform the regulator of private disclosures by e-mail.

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).

We consider the proposed contents of the disclosures sufficient.

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

We support making the appropriate disclosure on the business day following the transaction which triggered the disclosure.

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?

Market makers should not be exempt from these disclosure obligations.

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

No.

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?

A new Directive or Regulation would be a more efficient way of introducing such legislation rather than amending the Transparency Directive. It would also help to distinguish the differences in method and aims of the proposed legislation from those of the Transparency Directive.