

**GETCO**   
Europe Limited  
GLOBAL ELECTRONIC TRADING COMPANY

Mr. Kurt Pribil  
CESR-Pol, CESR  
11-13 Avenue de Friedland  
75008 Paris  
France

Dear Mr. Pribil

GETCO Europe Limited ("GETCO" or the "Firm") is an electronic liquidity provider that is a member of several European Regulated Markets ("RM's") and Multilateral Trading Facilities ("MTF's").<sup>1</sup> GETCO appreciates this opportunity to comment on the Committee of Securities Regulators ("CESR") proposals for a pan-European short selling disclosure regime.

GETCO's comments to CESR's proposals are discussed in detail below and generally relate to the following positions. (1) From the outset there is a need for a harmonised approach to short selling regulations across EU jurisdictions; (2) Regulators should work closely with each other to resolve inconsistencies in short selling transparency requirements, exemptions to the regimes and disclosure obligations; (3) A disclosure regime is a more effective regulatory approach than an order flagging regime; (4) Any public disclosure of short selling activity should be on an aggregate and anonymous basis and; (5) CESR should adopt a uniform definition of "market maker" and require market makers to meet defined quoting and trading obligations for any exemptions to short selling requirements.

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

GETCO is a strong proponent of transparency in markets; however, GETCO believes that there is no regulatory need or benefit by publicly disclosing a firm's short position in a particular security. Any information provided to the market should be aggregated in format and anonymous in nature.

Aggregated anonymous information would give the public the appropriate level of short selling interest to allow for informed decisions, without providing strategic information of an investment firms positions. GETCO believes that any higher levels of disclosure would open firms up to a disproportionate level of commercial risk.

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<sup>1</sup> Global Electronic Trading Company, or GETCO, with offices in Chicago, New York, London, and Singapore is a privately-held, electronic trading firm that provides liquidity to exchanges, MTF's and ATS's in the US, Europe and Asia.

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

GETCO fundamentally believes that the costs associated with flagging short sales substantially outweigh the benefits brought by any flagging requirement. Flagging short sales for order marking purposes serves no meaningful regulatory purpose other than merely identifying that the order sent to the market is a potential short sale. The costs associated with programming and monitoring systems to flag short sales would be significant.

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

GETCO agrees with CESR that a disclosure regime that considers the net short positions at a security level is more transparent than flagging short sell orders relating to just the underlying equity security only.

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

Any obligation introduced should be market wide and not sector or company specific with respect to disclosure levels. However, GETCO would emphasise that any extension of a disclosure regime will increase the incurred compliance costs on investment firms, and CESR must ensure that any additional benefit brought by an increasing scope for the disclosure requirements must outweigh the cost borne by firms from complying with such regulations.

***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)?***

GETCO believes that a regulator should receive the necessary information for monitoring purposes in relation to market abuse or settlement issues. As stated earlier, GETCO has concerns around the degree of transparency being proposed. GETCO strongly believes that any public disclosure of information should be anonymous in nature.

***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, GETCO fundamentally supports a uniform approach to short selling disclosure thresholds, any disclosure requirement should be adopted by all European regulators.

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

GETCO does not have a strong opinion as to what the appropriate threshold should be with respect to the private or public disclosure levels.

**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?**

More stringent public disclosure requirements are not warranted if a company is undertaking a capital raising transaction through share issues. Short selling is a valuable form of price discovery and is a legitimate market practice if conducted outside the confines of market abuse.

However, it is reasonable to assume that in cases where companies are undertaking capital raising schemes within the secondary markets, additional due diligence may be justified to monitor for any abusive practices.

GETCO believes that any regulator can and should act if they have concerns regarding abusive behaviour, disorderly markets or falling levels of investor confidence. Nevertheless, GETCO feels the trigger threshold for the public disclosure of stocks undergoing a capital raising event should be consistent with the standard disclosure requirement.

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

Please refer 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?**

GETCO appreciates that in extreme and unforeseen circumstances; there may be a need for specific rules aimed at a particular firm or sector. However, if such extreme cases were ever warranted, GETCO would prefer a more harmonised implementation of any emergency measure by European jurisdictions.

**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?**

GETCO agrees that any calculation should take place on a net basis to include any exposure in equity derivatives.

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

No.

**Q13: Do you consider that the content of the disclosure should include more details? If yes, please indicate what details (e.g. a breakdown between the physical and synthetic elements of a position).**

No. GETCO considers that if the net short position of exposure to a security is disclosed, it is not necessary to provide additional information. Notwithstanding this, if appropriate a regulator can request this information from any investment firm.

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

It would be useful to have further guidance if the disclosure requirement is no longer applicable prior to publication. For example, if you are short 0.5% at trade date (T), but purchase back stock on T+1, which results in a position that is below the 0.5% threshold, would the regulator require 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?**

GETCO strongly believes that exemptions should always exist for firms that genuinely act as a liquidity provider or market maker to be able sell short.

GETCO also fully supports a pan-European definition of 'market maker' or 'liquidity provider' that would cover the definition

*"in a way that ordinarily had the effect of providing liquidity on a regular basis to the market on both bid and offer sides of the market in comparable size."*

This definition is in line with several European regulators, and the Firm would encourage consistency on this definition.

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

GETCO strongly agrees that market makers should be exempt from these obligations. It is important to understand how market makers typically operate. Market makers perform a vital function in our market place by maintaining two-sided markets, i.e., providing both bids and offers. This function allows for investors to more easily access liquidity, improves price discovery and reduces volatility by providing a steady stream of demand or supply. Market makers do not have a directional bias on whether a stock price goes up or down. Direction neutrality is inherent in the very nature of market making and as such there is no incentive to establish short positions. Market makers typically attempt to end each trading day with as little risk or position as possible in a given security, i.e. flat. Furthermore, any residual position a market maker has will often have been closed out by the time the disclosure needs to be made to the market, therefore making the information inaccurate and potentially misleading. Given that, GETCO firmly agrees that market making activities be exempt from the disclosure regime.

**Q17: Should CESR consider any other exemptions?**

CESR should consider providing an exemption to a firm that wishes to manage a risk position they have obtained by facilitating an order (both primary and secondary market) for a client.

**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?**

GETCO believes that granting explicit powers to regulators to require short selling disclosures does not need to take the form of a new Directive. Regulators were responding to extraordinary market conditions when they decided to impose these regulatory requirements on firms. Since the initial restrictions, short selling regulations have adapted with the changes of market conditions. The Firm believes that a cross border approach by regulators via CESR to reach a consensus on any new or expanded short selling regulations is a better alternative than adopting new legislation.

Please do not hesitate to contact us if you have any questions regarding any of the comments provided in this letter.

Sincerely,

A handwritten signature in black ink that reads "John L. Mueller". The signature is written in a cursive style with a large initial "J" and "M".

John Mueller  
GETCO Europe Limited