

CESR

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Response to CESR:s consultation paper “CESR Proposal for a Pan-European Short Selling Regime, CESR/09-581

Skandinaviska Enskilda Banken AB:s (SEB) is a Swedish bank that provides all the investment services and activities (except operating an MTF) in MiFID. SEB serves both retail and institutional clients in Sweden and (mainly) northern Europe.

This is our response to CESR:s consultation paper.

As an overall comment we support CESR:s initiative in this area. Not because we think that transparency or restrictions on short selling are effective measures to achieve financial stability or prevent disorderly markets or market abuse, – but simply because the area needs harmonization. During the second half of 2008 a firm like us – engaged in cross border activities – suddenly had to keep track of and try to comply with a number of different changing restrictions, ways of calculation, thresholds and transparency requirements regarding short selling.

We appreciate that CESR starts with a pan-European disclosure regime and leaves the question of further measures for later. However – there is a risk that this approach could lead to various different national measures in the areas not covered. We would also – bearing in mind that entities engaged in short-selling normally are operating on a truly global basis - encourage CESR to coordinate its proposals with initiatives outside Europe, in particular the initiative announced by SEC in the US on 27 July.

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

Yes. But as mentioned before – not because it is an effective measure but because harmonization is needed.

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

Yes but we do think that the cons outweighs the pros for both methods. But given the fact that that is not the view of most EEA regulators and that the question is really differing national rules or harmonized pan-European rules we think that short position reporting is the preferable method. And we would like to add that flagging short sales would probably lead to less accurate

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information since the one doing the flagging (mostly investment firms) will depend on the information they might receive from clients whether a transaction is a short sale or not.

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?

If a disclosure regime as proposed would cover not only certain sectors then the scope should be more limited, at least for a start. A more appropriate scope would be shares admitted to trading on a regulated market – not shares admitted to trading only on an MTF. Since the requirements regarding information and disclosure on issuers with shares admitted to trading only on an MTF are not harmonized within EEA – it can prove to be difficult to calculate holdings against number of issued shares on that category of shares.

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 fully agree with CESR’s proposal. While we support the idea that notifications should be sent to supervisors (first tier notification), We would prefer that public disclosure (second tier) be made by the competent authority on an aggregated basis (rather than by the individual investor). This also seems to be consistent with the transparency regime currently under consideration in the US, where publication on an aggregated level through various SRO:s currently appears to be the preferred option. The comparison with disclosure of long positions is not fully valid, because such disclosure is highly correlated to governance related issues such as company control. The rationale behind a disclosure regime for short positions would rather be the interest for market participants to understand expectations on future fluctuations in share prices, and disclosure on aggregated level would therefore be more beneficial to market participants than individual disclosures.

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. And there should not be any room for national deviations (otherwise we risk ending up in the same situation again)

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 question the need for competent authorities to be notified already when 0,1 percent is reached, this might trigger a huge number of notification at least in respect of short selling in less liquid shares. The suggested threshold of 0,5 per cent for public disclosure would make sense also for notification to the regulator.

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. But there needs to be a clear rule on when that more stringent threshold should apply, for example from the date the share issue is announced.

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?

No.

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 CESR's proposal. As CESR points out one could argue for calculation on group level but the advantages with a simple and harmonized requirement on legal entity level outweighs the disadvantages.

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

We agree with CESR's proposal.

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 more details are needed. And there should be no room for national deviations in this area.

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

We agree with CESR's proposal.

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. And the exemption should apply without the market maker having to apply for it or register somewhere. Otherwise firms involved in cross-border activities would have to send different applications and registrations all over Europe – as under the Transparency directive today.

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

Yes.

Q17 Should CESR consider any other exemptions?

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?

Yes. And to maximize harmonization and reduce the administrative costs for cross border activities it should be in the form of a Regulation.

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