



William Fry

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Committee of European Securities Regulators
11-13 avenue de Friedland
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France

CESR Proposal for a Pan-European Short Selling Disclosure Regime – Ref: CESR/09-581 (the “Consultation Paper”)

Dear Sirs

We refer to the Consultation Paper issued by CESR on 8 July last and the invitation for responses from interested parties made therein.

By way of background, William Fry is a corporate law firm, based in Dublin, with significant involvement in advising on mergers & acquisitions, IPOs and securities regulation. In addition, we act for a number companies quoted on the Irish and London Stock Exchanges and so the proposals set out in the Consultation Paper are of relevance to our practice.

We note that CESR is in favour of pursuing enhanced transparency of short selling and that it believes greater disclosure of short positions would help to avoid disorderly markets at times of financial instability and would generally deter market abuse. While we acknowledge the need to ensure market integrity, we believe any disclosure regime introduced should be proportionate in the circumstances and seek to minimise the cost of compliance for market participants.

We welcome the opportunity to respond to the Consultation Paper. Set out below are our responses to some of the questions raised by CESR in the Consultation Paper.

Q5 – Do you agree with the two tier disclosure model CESR is proposing?

We note that CESR is proposing a public disclosure requirement supplemented by an obligation to make private disclosures to the relevant regulator at a lower threshold. Requiring private and public disclosure at different thresholds, we believe, is disproportionate given the costs that would be incurred by market participants in complying with such a regime and the limited benefits which could be achieved, from a regulatory perspective, by gathering limited and/or incomplete information.

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We would favour instead a single public disclosure obligation. The United Kingdom's Financial Services Authority, in its short selling discussion paper published in February 2009, supports a single public disclosure obligation which would be triggered on acquiring a short position in respect of 0.50% of a company's issued share capital.

Q6 – Do you agree that uniform pan-European disclosure thresholds should be set?

As mentioned above we believe any regime introduced should seek to minimise the cost of compliance for market participants. Our concern is that, with separate pan-European disclosure regimes already in place under the Transparency and Market Abuse Regulations, a further disclosure regime, if introduced too widely or on piecemeal basis across the EEA, could lead to excessive compliance costs for participants on regulated markets. For example, in Ireland, in addition to the Transparency and Market Abuse disclosure regimes further disclosure of interests in the shares of listed companies is also required, in certain circumstances, under the Irish Takeover Rules. In addition, many Irish companies whose shares are admitted to trading on the Irish Stock Exchange also have a listing on the London Stock Exchange. Consequently, such shareholders in such dual-listed companies are required, in certain circumstances, to comply with the compliance regimes of the United Kingdom also. Bearing this in mind, we would argue in favour of a uniform pan-European disclosure regime rather than one which allows individual Member States set the thresholds at which disclosure is required.

Q13 – Do you consider that the content of the disclosures should include more detail?

We would argue that, to avoid excessive costs of compliance for market participants, the content of disclosures should be consistent with the level of disclosure required under the Transparency and Market Abuse regimes. Accordingly, we agree that the content of disclosures should include the identity of the short position holder, the identity of the issuer, the size of the position held and the date on which the position was created or no longer held.

In addition, we believe consideration should be given as to whether disclosures should specify whether the short position is "naked" or "covered", given the difference in risks between these types of position.

Q18 – Do you agree that EEA securities regulators should be given explicit, stand-alone powers to require disclosure in respect of short selling?

Given that CESR does not envisage that a short position disclosure regime should employ the same disclosure thresholds as those under the Transparency regime, we agree that an amendment to the Transparency Directive is not appropriate. We agree that EEA securities regulators should be given explicit, stand-alone powers to require disclosure in respect of short selling. Accordingly, we would agree that there should be European legislation in this area via the enactment of a separate Directive.

If you wish to discuss any aspect of the above, please do not hesitate to contact either of the undersigned.



Yours sincerely

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