BLACKROCK

24 January 2014

European Securities and Markets Authority
103 rue de Grenelle
75007 Paris
France

Submitted online at: www.esma.europa.eu

RE: ESMA's policy orientations on possible implementing measures under the Market Abuse Regulation

Dear Sirs,

BlackRock is pleased to have the opportunity to respond to the policy orientation on possible implementing measures under the Market Abuse Regulation. We welcome the opportunity to address, and comment on, the issues raised by this consultation and we will continue to work with ESMA on any specific issues that may assist in improving the final policy orientation.

BlackRock is one of the world's pre-eminent investment management firms and a premier provider of global investment management, risk management and advisory services to institutional and retail clients around the world.

As of 31 December 2013, BlackRock's assets under management totalled €3.14 trillion across equity, fixed income, cash management, alternative investment and multi-investment and advisory strategies including the iShares® exchange traded funds ("ETFs").

BlackRock has a pan-European client base serviced from 22 offices across the continent. Public sector and multi-employer pension plans, insurance companies, third-party distributors and mutual funds, endowments, foundations, charities, corporations, official institutions, banks and individuals invest with BlackRock.

We broadly agree with the policy proposals included within the discussion paper. We would however highlight a couple of important aspects which need to be achieved in order for the Regulation and associated supervision to function effectively.

<u>General comments</u>

Consistency of application

The requirements of the Regulation apply not only to buy- and sell-side firms but also to any institution which falls within the definition of a 'disclosing market participant' – such as issuers. From our experience, it is often these other institutions who may erroneously make improper disclosures, and often when not performing market sounding activities. It is important therefore that the Regulation is applied, and enforced, in a consistent manner across all institutions in order to ensure that it operates effectively and minimises the possibility of market abuse being performed.

Continue to foster market efficiencies

In light of the range of institutions, and the circumstances, to which the Regulation will apply, there is a need to ensure that the requirements do not inhibit market efficiencies. Consequently, the application of ESMA's policies should not result in unnecessary complexity for any market participant, and should also not create burdensome obligations where not mandated within the Regulation. To achieve this, we recommend that ESMA adopt a pragmatic approach in developing its policy formation which recognises the variety of methods, approaches and institutions which are subject to the Regulation. Such an approach will allow firms to continue to engage with other market participants in innovative ways provided this innovation adheres to the framework established by the Regulation, and the spirit in which the Regulation has been developed.

Specific comments

We have not attempted to answer all the questions raised in the consultation but have focused on those of particular relevance to the buy-side, namely in relation to market soundings and disclosure of major shareholdings:

- in relation to market soundings, while we support the principle of standard procedures and scripts, flexibility needs to be built into the proposals to avoid inadvertently wall-crossing teams of individuals and teams within a firm who never want to be sounded;
- it is worth highlighting also that market soundings are not the only means through which wall-crossing can occur. Other instances do arise, and could include proposed changes in directors, advance notice of profit warnings and other matters which are not related to fund raising. The technical standards should recognise that market soundings are not the only means through which wall-crossing may occur. In recognition of this fact, we would welcome guidance being issued specifically for issuers in order to limit the possibility of market abuse; and
- in relation to disclosure requirements, we note that there is a potential for inconsistency with the reporting requirements of the Transparency Directive and the Short Selling Regulation. It is important that ESMA works to ensure consistent application of all these requirements.

We appreciate the opportunity to address and comment on the issues raised by the Discussion Paper and will continue to work with ESMA on any specific issues which may assist in further policy orientation. We have included below our response to those questions which are of interest to us.

We would welcome any further discussion on any of the points that we have raised.

Yours faithfully,

Nathan Douglas
Vice President
Compliance

Responses to questions

Buyback programmes

Q1: Do you agree that the mechanism used in the Transparency Directive or comparable mechanism should be used for public disclosure regarding buy-backs?

We agree that the Transparency Directive should be the determinant of any disclosure requirements. This will prevent unnecessary complexity being introduced to the regulatory regime through the creation of additional disclosure obligations.

Q2: Do you agree that aggregated figures on a daily basis would be sufficient for the public disclosure of buy-back measures? If so, should then the details of the transactions be disclosed on the issuer's web site?

We agree that aggregated measures should be sufficient. There is a risk that more granular information could present an investor with a significant challenge when a large volume of data is being considered; as such, aggregated data would provide a suitable alternative.

Q3: Do you agree to keep the deadline of 7 market sessions for public disclosure or to reduce it?

We do not consider that any changes are necessary to the deadline for public disclosure. No failings have been identified with the current regime in this respect, and we do not therefore see any need for an alteration in this requirement.

Q4: Do you agree to use the same deadline as the one chosen for public disclosure for disclosure towards competent authorities?

Given that disclosures have to be provided publicly within seven market sessions, we consider it appropriate to also require disclosure to be provided to competent authorities within this same period. This should allow efficient reporting to be provided.

Q5: Do you think that a single competent authority should be determined for the purpose of buy-back transactions reporting when the concerned share is traded on trading venues in different Member States? If so, what are your views on the proposed options?

In order to minimise costs and operational burdens imposed on firms, we consider it appropriate to require reports to be provided to a single competent authority. Any further dissemination around the regulatory community can be facilitated by the receiving competent authority, which would then be in a suitable position to enable any necessary discussions. Of the options presented, we consider Option 2 (of requiring the home competent authority of the issuer according to the Prospectus Directive) to provide the most appropriate solution. This is consistent with existing requirements and therefore should deliver an efficient solution for both firms and competent authorities.

Q6: Do you agree that with multi-listed shares the price should not be higher than the last traded price or last current bid on the most liquid market?

We agree with the proposal regarding the value for which the price should not be higher as this will reflect the market value of the shares. However, we would welcome further guidance on how the 'most liquid market' should be identified. This is not a term used within the current regime and, in the absence of any definition here, there is a risk that differing interpretations are applied.

Q7: Do you agree that during the last quarter of the regular (fixed) time of an auction the issuer must not enter any orders to purchase shares?

Q8: Do you agree with the above mentioned cumulative criteria for extreme low liquidity? If not, please explain and, if possible, provide alternative criteria to consider.

Q9: Do you think that the volume-limitation for liquid shares should be lowered and three different thresholds regarding liquid, illiquid and shares with extreme low liquidity should be introduced?

We do not have any comments on these matters.

Q10: Do you think that for the calculation of the volume limit the significant volumes on all trading venues should be taken into account and that issuers are best placed to perform calculations?

As the Regulation requires volumes on markets other than regulated markets to be included in the calculations, we consider that issuers are best placed to perform these calculations. They have easy access to the data that is needed in order to perform these calculations and are thus likely to be the entity that can most easily perform these calculations.

Q11: Do you agree with the approach suggested to maintain the trading and selling restrictions during the buy-back and the related exemptions? If not, please explain.

We agree with the proposal to continue to impose the same restrictions to trading and selling as those in place under the current regime.

Stabilisation Measures

Q22: Do you agree that "block-trades" cannot be subject to the exemption provided by Article 3(1) of MAR?

We do not agree the "block-trades" cannot be subject to this exemption. The exemption is available to trading in own shares in buy-back programmes, with a number of conditions imposed on the exemption, including the need to respect price and volume limits. Given that a "block-trade" is not defined and in light of the conditions attached to the exemption, we do not see any justifiable reason for this exemption to not be available for "block-trades". Trades of this nature are not common, and we consider that they can legitimately be allowed to implement a greenshoe for stabilisation.

Market soundings

Q23: Do you agree with ESMA's proposals for the standards that should apply prior to conducting a market sounding?

We generally agree with the proposals. However, we consider it necessary that the requirements are imposed in a consistent manner on all disclosing market participants in recognition of the fact that the range of entities who could be involved with a market sounding will not be limited to only large sell-side firms. To this extent, a key feature of the standards will be the consistency which is achieved in relation to the application of the requirements by all competent authorities with responsibility for enforcing the requirements.

It is notable that the discussion paper does not propose a technical defined term for a ‘block trade’; however, in the absence of such, it is important to highlight the need for recognition that some block trades are announceable to the market whereas some (for example, a block trade of existing shares from one buyer to another) are not announceable. Specific recognition of this is necessary in order to provide further clarity on the application of the market sounding requirements at Article 7c of the Regulation.

Q24: Do you have any views on the above?

We agree with the comment in the discussion paper that it ‘might be better not to restrict the hours in which market soundings take place’. As the paper acknowledges, trading in a specific security may occur in different time zones. Given this globalisation – which is only likely to increase further in scale and efficiency – there should be no restrictions imposed which would adversely impact the effective performance of markets. It is more imperative that any market sounding activity is performed in accordance with the obligations discussed elsewhere in the paper, and where appropriate systems and controls are in place to ensure the disclosing market participant is able to provide demonstrable evidence of compliance with the Regulation.

Q25: Which of the 3 options described above in paragraph 82 do you think should apply? Should any other options be considered?

Within a large firm, there is a significant likelihood that divergent views will be expressed on whether individuals or teams are willing to be wall-crossed. For example, index managers or those involved in securities lending will never want to be made insiders in any circumstances as this would disrupt the fundamentals of their investment process. Active managers will indicate their willingness to be wall-crossed on a case-by-case basis. A simple blanket categorisation of such a firm (as proposed under Option 2) would therefore result in either no market soundings being received, or in improper disclosure and potential inadvertent wall-crossing when not desired. The preferred solution should therefore provide flexibility as to whether market soundings are capable of being received or not, thereby allowing a case-by-case assessment of the situation.

Where the buy-side firm is able to nominate a team or designated individual who will receive all market soundings this would allow the buy-side firm to determine how best to proceed with the information which has been received. This would mitigate the risk of inadvertent wall-crossings being performed, while providing certainty to the disclosing market participant on whether the firm is willing to receive market soundings. This option would be consistent with Question 28 in the discussion paper, such as that which suggests that the disclosing market participant should keep a list of the persons or designated person responsible for receiving market soundings. This option should not prove unduly burdensome for disclosing market participants, but should prevent inadvertent disclosures and yet provide the buy-side firm with flexibility in terms of receipt and further dissemination throughout the firm.

It is also worth highlighting that individuals can and do move internally to a new role within an organisation. If the disclosing market participant were required to maintain a list of individuals willing to receive market soundings, that list could quickly become out-of-date and therefore result in inadvertent wall-crossing occurring. Such lists would need to be regularly checked and updated in order to limit the possibility of this occurring. The burden this would place on firms could be avoided if firms were able to designate teams who should be approached.

Q26: Do you agree with these proposals for scripts? Are there any other elements that you think should be included?

We generally support the proposals for scripts to be used when performing market soundings. This should assist in ensuring that improper disclosure is not performed, and any degree of standardisation will facilitate easier monitoring of ongoing compliance.

Whilst we support the concept of scripts in principle, the content required by these scripts should not become unduly burdensome such that the market becomes less effective. There is therefore a need to strike the right balance between the information that is mandatory within the script and the efficiencies of the market. We welcome the inclusion of an explanation of the cleansing strategy within the script, but would also highlight the need for this to include the expected timing of a cleansing event. This information will have a direct bearing on the decision of the buy-side firm on whether to accept the wall-crossing. Mandatory provision of this information will ensure that the buy-side firm is provided in all instances with sufficient information allowing it to determine whether to accept the wall-crossing.

Q27: Do you agree with these proposals regarding sounding lists?

We consider it appropriate for the disclosing market participant to retain records of the firms contacted and the specific individual(s) within that firm who were sounded. We would however highlight that we do not consider it necessary to extend the record keeping obligations such that the disclosing market participant has to retain records of individuals within the firm who were then subsequently wall-crossed as this information is not likely to be available to the disclosing market participant, but maintained by the buy-side firm in question.

Q28: Do you agree with the requirement for disclosing market participants set out in paragraph 89?

In accordance with our response to Question 25 above, we agree with the proposal for disclosing market participants to retain a list of the person responsible for receipt of market soundings at individual firms. This should limit situations in which firms receive improper disclosures or inadvertent market soundings.

Q29: Do you agree with these proposals regarding recorded lines?

We note that Article 7c of the Regulation does not prohibit the performance of a market sounding by means other than through recorded telephone lines. The requirements therein are associated more with the need to retain records of the information that has been provided such that copies can be provided to competent authorities. On this basis, it should be possible for market soundings to be provided through a format other than solely through recorded telephone lines.

In an age of digital communications, we do not consider it necessary to restrict an activity to a single communication source if the requirement does not prohibit other methods of communication. Email is an accepted method for communication between market participants and can provide records as required by the Regulation. On this basis, we do not consider it necessary to dictate that all market soundings are performed on recorded telephone lines. In any instances in which a recorded telephone line was not used, the disclosing market participant would still be subject to the record keeping obligations, allowing both firms and the competent authorities to perform appropriate investigations in the event that there is any suspicion of market abuse having been performed.

Market soundings can be, and are, performed in circumstances in which a recorded line is not used. Examples of such include conference calls and face-to-face meetings, both of which can feature market soundings. In these circumstances, the ability of the disclosing market participant to retain records or to follow a script is severely limited. It is important therefore that there is recognition of these possibilities; any associated requirements should not inhibit the circumstances in which a market sounding can be performed. We consider it more prudent to require the records retained to demonstrate the date and details of the information that was provided, albeit that a record of the conversation may not be retained in all circumstances.

We would also highlight the need for a thorough cost benefit analysis to be performed of this requirement as the introduction of these new recording obligations would be a significant change from current practices. In light of the fact that many market soundings are performed through means other than on recorded telephone lines, the blanket recording of all telephone lines of disclosing market participants would likely result in additional cost without comparable benefits. In addition, issuers are not currently subject to any recording obligations; the introduction of the proposed record keeping obligations would involve material cost and resource implications but again without comparable increases in costs. It is important therefore to ensure that the benefits delivered are tangible when compared against the additional costs introduced.

Q30: Are you in favour of an ex post confirmation procedure? If so, do you agree with its proposed form and content?

A new requirement for disclosing market participants to provide written confirmation to investors would increase the volume of mandatory communications between such firms when compared against the current regime. It would also necessitate a complete change in practice for issuers who do not currently follow any such protocols. This increase in the volume of communication traffic which passes between the disclosing market participant and the investor increases the risk of further inadvertent disclosure of inside information or information which would result in a wall-crossing. This increase in risk which the additional written confirmation represents is not offset by additional benefits when compared against current requirements or accepted market practices.

Furthermore, any reminder that is provided to the buy-side in relation to their obligations and prohibitions should remain a high level summary statement rather than impose undue restrictions on the ability of the buy-side firm to perform the activities for which they have authorisation. If this is not the case, information provided by the disclosing market participant can result in the investor having to respond in writing in order to clarify the extent of the disclosure which has been received and therefore the nature of the market sounding and wall-crossing that has been performed. For example, this could be the case where the disclosing market participant confirms that the whole firm is wall-crossed when in fact only a team or group of individuals have in fact been wall-crossed. The disclosing market participant would then need similarly to reply; the process could easily become unduly burdensome and time consuming without adding additional value and could therefore introduce unnecessary inefficiencies to the process.

Consequently, we do not consider that the proposed written confirmations should be mandatory.

Q31: Do you agree with the approach described above in paragraph 96 with regard to confirmation by investors of their prior agreement to be wall-crossed?

We agree that investors should provide confirmation to the disclosing market participant of whether they are willing to be wall-crossed. However, in accordance with our responses above, and whilst acknowledging that each situation should be judged on a case-by-case basis, we consider that this confirmation could be generic and relate to a team or function that has responsibility for initial receipt of market soundings and then subsequent dissemination as appropriate around the firm. We also agree that in the interests of not stifling the efficiencies of the market, the disclosing market participant should not be obliged to provide written confirmations to any buy-side firm if and when confirmation is provided of a willingness to receive market sounding approaches.

Whilst we broadly agree with the proposals, it is necessary to highlight the need for consistent enforcement of the requirements in order that issuers follow the same protocols as other disclosing market participants.

It is also worth highlighting that inside information should not be provided by the disclosing market participant until such time as the confirmation has been received from the buy-side firm that they are willing to receive the information that would take them across the wall. The example of email traffic adequately reiterates the point. If the initial approach were in email, the correspondence could include inside information which would be received by the buy-side firm irrespective of whether there is a willingness to be wall-crossed. Consequently, we would welcome commentary which confirmed that the initial approach from a disclosing market participant should be made on a recorded telephone line.

Q32: Do you agree with these proposals regarding disclosing market participants' internal processes and controls?

We have no comments to make on these proposals.

Q33: Do you have any views on the proposals in paragraphs 102 to 104 above?

In relation to the proposals that the buy-side should retain details of all assessments performed irrespective of whether a wall-crossing has occurred, we consider this to create an undue burden on buy-side firms without delivering additional benefit to the process.

As an alternative, we consider that the buy-side firm should retain evidence of any assessment performed where there is a disagreement with the disclosing market participant on whether the buy-side firm has been wall-crossed. This will provide transparency where there is a disagreement, and enable the reasons for the discrepancy to be clearly identifiable. Given the volume of potential soundings which occur, this alternative would not result in the buy-side firm having an unduly burdensome workload to document analysis of each and every potential sounding which occurred.

In relation to the proposal that buy-side firms may designate a person who receives a sounding approach, we broadly consider this to be a viable solution which limits the propensity for inadvertent disclosure to be provided. We would however highlight that the designated contact could be a generic contact point for a team within the firm. This would enable information to be received by a group of individuals and recognise that the individuals in that team could change over time. By utilising a generic contact point, the firm can continue to receive market sounding information in the event of changes occurring within that team. Controls would however need to be implemented by the buy-side firm in relation to the individuals who could receive and/or access this information. This solution also provides the buy-side firm with sufficient flexibility to disseminate the market sounding information around the firm but with the element of control which prevents inadvertent disclosures being provided.

A further complexity here is the contact with issuers themselves who often do not follow any standard practices in terms of conducting market soundings. Situations can – and do – arise in which issuers contact individuals within buy-side firms directly, irrespective of any procedure in operation within the buy-side firm which is designed to control the receipt and dissemination of market soundings. Given this possibility, there is a need to ensure the requirements imposed do not limit the ability of disclosing market participants to contact buy-side firms, but when a market sounding is performed by an issuer, that issuer is in a position to record the discussion (whether themselves or by having their underwriter participate).

Q34: Do you agree with this proposal regarding discrepancies of opinion?

Where a discrepancy of opinion occurs, we do not consider that the buy-side firm should be obliged to provide publicly available information to the disclosing market participant. This would impose a disproportionate obligation on the buy-side firm without providing additional benefit to the regime.

As mentioned in our answer to Question 33 above, we consider it appropriate that the buy-side firm retain evidence of the reasons for any discrepancy of opinion, but this should not extend to the provision of data that is publicly available and which, therefore, the disclosing market participant should already have obtained and considered. In such instances, the obligation placed on the buy-side firm should be to record the reasoning behind the discrepancy and not to inform the disclosing market participant of information which is publicly available.

Q35: Do you think that the buy-side should or should not also inform the disclosing market participant when it thinks it has been given inside information by the disclosing market participant but the disclosing market participant has not indicated that it is inside information?

We do not consider it necessary for the buy-side firm to inform the disclosing market participant of instances in which there is a disagreement on whether inside information has been provided. In accordance with our answer to Question 33 above, we consider it appropriate for the buy-side firm to document its analysis and retain records in accordance with the Regulation, but do not see the provision of this information to the disclosing market participant to provide additional benefit to the process. It could however result in undue discussions between the two entities which acted only to detract from the efficiencies of the market.

Q36: Do you agree with the proposals for the buy side to report to competent authorities when they suspect improper disclosure of inside information, particularly to capture situations where such an obligation does not already arise under the Market Abuse Regulation?

We broadly support the proposal that buy-side firms should notify the competent authorities if improper disclosure is suspected. This should include the ability to notify the competent authority of those instances in which an issuer makes improper disclosure. This should add rigour to the regime by allowing the competent authorities to identify any disclosing market participant who continually provides improper disclosure, enabling action to be taken that limits the potential for market abuse to occur.

Q37: Do you have views on the proposals in paragraphs 113 to 115 above?

In relation to the proposal that follow up calls made by the buy-side should be performed on recorded telephone lines, we do not consider this to be a requirement for the buy-side. If the sell-side firm is likely to fall within the definition of a disclosing market participant, it is the responsibility of that firm to ensure that the requirements of the Regulation are complied with at all times. This includes the record keeping obligations. In any instance in which a sell-side firm falls within the definition of a disclosing market participant, that firm must ensure that systems and controls allow it to demonstrate ongoing compliance with the obligations imposed by the Regulation. The Regulation does not impose these record keeping obligations on the buy-side firm. Thus it is not their duty to enable the sell-side firm to maintain its compliance even in those instances in which a conversation is initiated by the buy-side firm.

Q38: Do you think there are any other issues that should be included in ESMA guidelines for the buy-side?

We have highlighted above some instances in which the current practices of issuers may not be consistent with the content of the discussion paper. Whilst issuers will be subject to the requirements applicable to disclosing market participants, we would welcome additional guidance being drafted that was specifically addressed to issuers in order to address these points.

Q39: What are your views on these options?

Of the options presented, we consider Option 1 to provide the most acceptable solution. This should provide certainty on the point at which the cleansing has been performed. We agree that it is beneficial if discussions take place between the buy-side firm and disclosing market participant, but would note that the responsibility should not be placed on the buy-side firm to determine the cleansing strategy. It is important therefore that any guidance does not result in scope creep and unduly oblige the buy-side firm to perform a function which it is unable to do.

There is also a need to ensure that both the disclosing market participant and the buy-side firm are both clear on what constitutes a cleansing strategy. If this consistency of understanding is not achieved, there is a risk that market efficiencies are diminished as participants discuss cleansing ad infinitum. Consequently, we consider that cleansing should consist of the provision of details of when and how the insider information will cease to be treated as such, thereby removing the need for individuals to be wall-crossed. We would also welcome the inclusion of guidance which addressed the need for a disclosing market participant to notify the buy-side firm if and when any changes are made or expected to the cleansing that is to be performed.

Investment recommendations

Q103: Should the thresholds for disclosure of major shareholdings be reduced to 2-3% of the total issued share capital, or is the current threshold of 5% sufficient where the firm can choose to disclose significant shareholdings above a lower threshold (for example 1%) than is required? Or, do you have suggestions for alternative approaches to the disclosure of conflicts of interest (e.g. any holdings should be disclosed)?

When considering this question, it is necessary to recognise that the Transparency Directive has only just been revised. These revisions have not included mandatory disclosure of major shareholdings at 3% or lower of total issued share capital as no market failure has been identified which would warrant mandatory disclosure of such shareholdings. We would also note that: (a) firms can choose to disclose significant shareholdings at a lower level; and (b) the Transparency Directive does provide competent authorities with the flexibility to oblige further disclosures which go beyond those required by the Directive. These two aspects should provide appropriate coverage if it is considered that additional disclosures are necessary. Consequently, we do not consider it necessary to introduce further disclosure obligations.

We would also note that Directive 2004/39/EC (“MiFID”) obliges firms to disclose conflicts of interest where they are unable to prevent the risk of damage to client interests. We consider that MiFID provides a suitable mechanism through which conflicts of interest are managed and disclosed, and do not see the need for separate requirements in this regard.

Q104: Do you agree on the introduction of a disclosure duty for net short positions? If yes, what threshold do you consider would be appropriate and why?

Q105: Do you agree on the introduction of a disclosure duty for positions in debt instruments? If yes, what threshold do you consider would be appropriate and why.

It is necessary here to be cognisant of the existing requirements of Regulation 236/2012 (the “Short Selling Regulation”). This Regulation was introduced in order to deliver appropriate information to the market on short positions held. It was finalised after extensive debate on its scope and coverage, and was agreed to cover shares and sovereign debt instruments. At the point of introduction of the Short Selling Regulation, it was not considered necessary to introduce additional obligations in relation other debt instruments or net short positions.

However, the Regulation does provide ability for regulators to enact further obligations; Recital 4 states that its scope should be as wide as possible, but it should only be in exceptional circumstances that competent authorities and ESMA should be entitled to take measures concerning all types of financial instrument. This mechanism reflects the fact that further actions were not considered to be a necessity, but may need to be introduced in extremis. The review of the Short Selling Regulation which has recently been adopted by the European Commission notes that 'it is too early, based on available evidence, to draw firm conclusions on the operation of the [Short Selling Regulation] framework which would warrant a revision of the legislation at this stage'. Given these conclusions and the powers which are already available to both competent authorities and ESMA through the existing Regulation, we do not therefore consider it necessary to introduce additional obligations through the Market Abuse Regulation.

In addition, the opaqueness of net short positions is worth noting. The complexity which this area can represent, with physical and synthetic holdings, contracts for differences, futures and options and simple stock, would make it difficult to define the circumstances in which a net short position would need to be disclosed. Consequently, we consider that the flexibility which is provided through the Short Selling Regulation to both competent authorities and ESMA should deliver a mechanism through which to address any regulatory concerns associated with net short positions without the need to prescribe the circumstances in which information or disclosures need to be provided. This should provide a more appropriate framework than any introduction of additional obligations in this complex area of the market.