



Date: 8 July 2009
Ref.: CESR/09-667

PRESS RELEASE

CESR to consult on a pan-European short selling disclosure regime

CESR publishes today a consultation paper on its proposal for a pan-European short selling disclosure regime (Ref. CESR/09-581). After a significant number of CESR Members took emergency measures to restrict short selling in financial instruments due to turbulent market conditions in the fall of 2008, as a first step, CESR developed a list which provided an overview of the situation across Europe, updating it when Members made changes in their short selling measures. In addition, CESR also considered it appropriate to launch a policy review, with the aim of formulating pan-European standards for short selling.

CESR is of the view that a pan-European regime for enhanced transparency of short selling should be implemented on a permanent and harmonised basis across the European Economic Area (EEA) by introducing European legislation in this area. Although the design of a common disclosure regime has been prioritised so far, CESR continues to consider whether further harmonised measures for the regulation of short selling, beyond disclosure, are required and feasible.

Kurt Pribil, Executive Director of the Austrian Finanzmarktaufsicht (FMA) and Chair of CESR-Pol stated:

“The proposal we present today would provide a uniform approach to short selling in order to assist market participants who operate on a cross-border basis in a number of CESR jurisdictions. The proposed disclosure regime is tailored to cover a variety of different European markets, involving different sizes of companies, liquidity and market practices.

Requiring the reporting of significant short positions to the regulators would better enable them to identify which market participants are taking the lead in shorting financial instruments and, when necessary, to pursue enquiries with participants suspected of abusive short selling. Imposing a requirement for short positions to be disclosed publicly to the market as a whole will provide a potential constraint on aggressive large-scale short selling. We believe the combination of these two measures is a balanced solution, which recognises that short selling can sometimes be beneficial, whilst also ensuring that its potentially negative consequences are sufficiently contained.”

Disclosure regime to reduce risks inherent in short selling

The objective of the introduction of a pan-European disclosure regime is to reduce or mitigate the negative consequences and risks which short selling can have, without having an undue adverse impact on the benefits which short selling generally brings to markets. Greater disclosure is considered to both help deter market abuse and reduce the risks of disorderly markets posed by short selling. A disclosure regime would provide regulators with early warnings on a build-up of large short positions, and thereby alert regulators to potentially abusive behaviour and enable them to monitor and take actions more effectively. Facilitating ready access to information on short selling would benefit the market by making available information to assist price discovery.

Proposed model for disclosure of significant short positions

The proposed disclosure regime is based on a two-tier system for the disclosure of significant net short positions held in shares admitted to trading on an EEA regulated market or on a Multilateral



Trading Facility (MTF). When a short position reaches a specified initial threshold, the short seller would be obliged to make a private disclosure to the regulator of the most liquid market for the share in which the position was held. The private disclosure threshold is proposed to be set at 0.1% of the company's issued share capital. If the position reached a second-tier threshold, that of 0.5%, the short seller would be required to publically disclose its position to the market as a whole. Any further private or public disclosures would then be required if the short positions subsequently crossed the incremental threshold of 0.1%. A private or public disclosure would also be necessary if the positions fell below any of the trigger thresholds, including the initial trigger thresholds of 0.1% and 0.5%.

Regime to also cover exchange-traded and OTC derivatives

In calculating whether a disclosure would be required, market participants would need to take account of any position, which provided an economic exposure to a particular share. Positions held in exchange-traded and OTC derivatives would therefore be covered, as well as short positions in cash markets. Disclosure calculations and reports would have to be conducted on a net basis, with any positions involving long economic exposures to a share to be subtracted from the short positions. Disclosure reports of short positions, both to the regulator and the market, would have to be done on the trading day following the day on which the relevant trigger threshold had been crossed. However, there would be exemptions from the disclosure requirements for short positions resulting from market making activities.

The work undertaken to prepare this consultation paper should be viewed in the context of CESR's wider objectives. In particular, proposing a pan-European harmonised disclosure regime for short selling seeks to contribute towards the implementation of CESR's objectives of enhancing supervisory convergence, fostering market transparency and improving market efficiency.

CESR invites responses to the consultation paper. In addition to general comments, stakeholders are asked to provide their views on the specific aspects of the proposed disclosure model, including uniform disclosure thresholds, procedures and timing of disclosure, as well as exemptions to disclosure obligations. All contributions should be submitted online via CESR's website under the heading 'Consultations' at www.cesr.eu by 30 September 2009. CESR will consider carefully the responses received and will prepare a final proposal by the end of 2009 which it will provide to the European Commission for its consideration. A feedback statement will also be published.



Notes for editors:

1. On 22 September 2008, CESR published a list of measures (Ref. CESR/08-742a) that facilitates an overview of actions taken by CESR Members in relation to short selling. It includes either the statements or links to the statements published by CESR Members explaining the measures taken by them. CESR updates the list on a continuous basis. The latest list is available at <http://www.cesr.eu/popup2.php?id=5238>.
2. On 20 January 2009, CESR published a public statement on its activities in relation to short selling (Ref. CESR/09-069), noting that a dedicated task force on short selling under the auspices of CESR-Pol had been formed. The task force was mandated by CESR to analyse the impact of the temporary measures introduced by CESR Members and to conduct further work, taking into account contributions from the market, with a view to developing a range of options for achieving greater convergence between CESR Members in the short selling space.
3. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the European Commission, in particular in its preparation of draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day to day implementation of community legislation in the Member States.
 - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the Group of Wise Men on the regulation of European securities markets. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.
4. Each Member State of the European Union has one member in the Committee. The members are nominated by the Member States and are the heads of the national public authorities competent in the field of securities. The European Commission has nominated as its representative the Director General of the DG MARKT. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.

Further information:

Carlo Comporti
Secretary General of CESR

Victoria Powell
Director of Communications

Tel: +33 (0) 158 36 43 21
Fax: +33 (0) 158 36 43 30
Email: communications@cesr.eu
Website: www.cesr.eu