



## COMMITTEE OF EUROPEAN SECURITIES REGULATORS

### THE SECRETARY GENERAL

Mr Michel Barnier  
Commissioner  
European Commission  
rue de la Loi, 200  
1040 Bruxelles,  
Belgium

Date: 2 March 2010  
Ref.: CESR/10-299

### **Re: Pan-European Short Selling Disclosure Regime**

Dear Mr. Barnier,

On behalf of my colleagues, the members of the Committee of European Securities Regulators (CESR), I am pleased to provide you with the enclosed report on a Model for a Pan-European Short Selling Disclosure Regime (Ref. CESR/10-088).

The report describes CESR's proposal for a mandatory short selling disclosure regime in Europe. CESR recommends that the European Institutions introduce such a regime as soon as possible. In the meantime, those CESR Members that already have the powers to introduce a permanent disclosure regime, as elaborated in the report, will begin the process of implementing this regime. Those CESR members who do not have the necessary legal powers will aim towards implementing this regime on a best efforts basis, until a European regime is adopted.

In the light of very turbulent market conditions and concerns in the second half of 2008 about the threat to financial stability and the associated risks of disorderly markets and market abuse, a significant number of CESR members took emergency measures to restrict and/or impose conditions on short selling. Some of these measures remain applicable, having been extended or renewed in modified form. Because of the adoption of these various regulatory measures, CESR considered that it was appropriate to review short selling policies with the aim of formulating pan-European standards in this area. CESR therefore published in July 2009 a consultation paper (CP) CESR Proposal for a Pan-European Short Selling Disclosure Regime's (Ref. CESR/09-581). CESR received 49 responses to its consultation. The enclosed Feedback Statement (Ref. CESR/10-089) on the consultation is enclosed for your information.

The short selling disclosure regime proposed by CESR is a two tier model for the disclosure of significant individual net short positions in all shares that are admitted to trading on an EEA regulated market and/or an EEA Multilateral Trading Facility (MTF) if the primary market of those shares is located in the EEA.

Under the proposed regime, at the lower threshold of 0.2%, positions should be disclosed to the relevant competent authority. In addition, steps of 0.1% would trigger further disclosure obligations. After the position reaches the higher threshold of 0.5% and any additional steps of 0.1% thereafter, the position and any additional steps should be disclosed to the competent authority as well as to the market as a whole. CESR considers that, on an optional basis, its members might choose to publish aggregated data as a result of private disclosures received because of the potential informational benefits of such disclosures. However, one member (the French AMF) expressed a specific reservation on this point arguing that because of its informational benefits, the publication of aggregated data should be mandatory.



In calculating whether a disclosure is required, market participants should aggregate any position which provides 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 be done on a net basis with any positions involving long economic exposures to a share subtracted from the short positions. Disclosure reports of short positions – whether to the regulator or to the market – would be made on the trading day following that on which the relevant threshold or additional step has been crossed. Market making activities would be exempted from the disclosure requirements.

CESR will continue to work in the coming months on this issue, to ensure greater clarity on the technical details necessary to implement such a regime effectively. In addition, as noted in the report, CESR continues to consider whether further harmonised measures for the regulation of short selling, beyond disclosure, are required and feasible.

Should you need any clarification on the content of the report please contact either me, Anastassios Gabrielides, Chair of CESR-Pol, or Carlo Comporti, Secretary General of CESR.

Yours sincerely,

Eddy Wymeersch

Encl.: - Report on the Model for a Pan-European Short Selling Disclosure Regime (Ref. CESR/10-088);  
- Feedback Statement (Ref. CESR/10-089).