European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken

EACB answer on the consultation of CESR on its proposal for a pan-European short selling disclosure regime

30 September 2009

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

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General remarks

The European Association of Co-operative Banks (EACB) would like to thank the Committee of European Securities Regulators (CESR) for the possibility of commenting on its proposal for a pan-European short selling disclosure regime.

The emergency measures concerning short selling undertaken by securities regulators in the European Union in the light of the very turbulent market conditions in the second half of 2008 lead to a very fragmented landscape of rules. We are very supportive of CESR's efforts to harmonize as much as possible measures on short selling in the European jurisdictions.

As highlighted by the secretary general of CESR at a public hearing – held in Paris on the 09 September 2009 – there were major difficulties in reaching a convergence of short selling measures in Europe, e.g. because of varying legal powers possessed by national regulators.

In this light we consider the proposal of a private disclosure of net short positions held in shares admitted to trading on a regulated market or on a Multilateral Trading Facility (MTF) in the European Union that have reached a certain threshold as a good compromise that can be further discussed.

We have strong objections against the proposed public disclosure of short positions. It would have huge negative macro economical impacts. The impact assessment outlined on the pages 15 – 16 of the consultation paper does not at all provide a sufficient rationale for such far-reaching provisions.

A public, non-anonymised disclosure of short positions would make them available to any competitor on the market. This would – in the end – lead to a significant decrease of liquidity in the respective equity market. Such a provision would be an indirect ban of short selling in general.

Following this general remarks we would like to highlight some specific answers to selected questions CESR raised in its consultation:

Question 1: Do you agree that enhanced transparency of short selling should be pursued?

We would welcome harmonized approaches on a European and on a global level.

Question 2: Do you agree with CESR's analysis of the pros and cons of flagging short sales versus short position reporting?

We fully agree with CESR's assessment of the mainly negative aspects of flagging short sales, especially the inherent imperfections in the data that would be collected when following this approach.

Question 3: Do you agree that, on balance, transparency is better achieved through a short position disclosure regime rather than through a 'flagging' requirement?

We fully agree with this statement.

Question 4: Do you have any comments on CESR's proposals as regards the scope of the disclosure regime?

We agree with the proposed scope of the disclosure regime.

Question 5: 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 already touched this topic in our general remarks. We agree with private reporting obligations if they are fully harmonized in the European Union. We are against public disclosures, because they would lead to significantly less short selling and in the end to a decrease of liquidity in the respective equity markets.

The approach mentioned by CESR in this question – aggregated data made publicly available by security regulators – would be indeed an interesting alternative that we would welcome. By following this approach we consider the second tier as not necessary any more since the data would be available already after the first trigger threshold. This would make the short selling disclosure proposal less complicated.

Question 6: 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?

In the cross border markets of today any disclosure threshold should be uniform in the European Union.

Question 7: Do you agree with the thresholds for public and private disclosure proposed by CESR? If not, what alternatives would you suggest and why?

Our comments on public disclosures can be found in the general remarks as well as in our answer to question 5. With respect to private disclosures we call for intense statistical tests that scrutinize the volume of short selling positions in order to deduce reasonable threshold values.

Question 8: 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

Question 9: If so, do you agree that the trigger threshold for public disclosures in such circumstances should be 0.25%?

See our answer to question 7.

Question 10: 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. We do not see other circumstances.

Question 11: Do you have any comments on CESR's proposals concerning how short positions should be calculated? Should CESR consider any alternative method of calculation?

No answer.

Question 12: Do you have any comments on CESR's proposals for the mechanics of the private and public disclosure?

We have no further comments.

Question 13: 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, there should not be any further details.

Question 14: Do you have any comments on CESR's proposals concerning the timeframe for disclosures?

No.

Question 15: Do you agree, as a matter of principle, that market makers should be exempt from disclosure obligations in respect of their market making activities?

The argumentation of CESR shows that the envisaged public disclosure can indeed have harmful consequences for the market. The level playing field might be in danger when different disclosure requirements apply to different market participants. Therefore we are generally against public disclosures of short selling positions.

Question 16: If so, should they be exempt from disclosure to the regulator?

No answer.

Question 17: Should CESR consider any other exemptions?

See our answer to question 15.

Question 18: 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?

We think that an obligation of pure private disclosures might be feasible without a level 1 measure. Any public disclosures in this field should in any case be based on a level 1 measure, mainly because they touch the rights of investors significantly and would have huge impact on equity markets in general.

Contact:

The EACB trusts that its comments will be taken into account. For further information or questions on this paper, please contact:

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