

# EU to Establish Pan-European Short Selling Disclosure Regime

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The Committee of European Securities Regulators (CESR)[\[1\]](#) has recommended the introduction of a pan-European disclosure regime requiring investors to report net short positions to the relevant regulator privately and to the market publicly. The regime will cover short positions in all shares that are admitted to trading on a European Economic Area regulated market or multilateral trading facility, unless the primary market for the shares is located outside the EEA (Relevant Shares). The recommendation follows an extensive consultation process launched in July 2009. Michel Barnier, EU internal market commissioner, recently confirmed that the European Commission would now push forward with EU-wide legislation to implement the recommendation.

## **Two-tier disclosure regime**

The disclosure regime proposed is a two-tier model for disclosure of significant net short positions in Relevant Shares by investors. The scope will not be limited by industry or type of share.

Disclosure would be at two levels:

- positions of 0.2 percent of the relevant company's issued share capital or above would be disclosed privately to the relevant regulator (which in the UK would be the Financial Services Authority);
- positions of 0.5 percent or above would be disclosed both privately to the regulator and publicly to the market as a whole.

All changes of position up or down would be reported at increments of 0.1 percent, first to the regulator privately (at 0.3 percent and 0.4 percent) and then publicly to the regulator and market at 0.6 percent, 0.7 percent etc.

The regime will cover not simply short positions in the cash markets but “any transaction that provided an economic exposure to a particular share”, e.g., exchange traded and OTC derivatives. Short positions are to be calculated on a net basis, with disclosure reports being made on the trading day following the crossing of the relevant threshold.

The required disclosures would include the identity of the short position holder and the issuer, the size of the position and the date on which the position was created or no longer held. CESR is still working on the mechanics of disclosure.

Market makers will be exempt when genuinely acting as such.

In addition, CESR considers each regulator should be empowered to choose to publish aggregated data they receive from private disclosures.

The regime is similar to the current UK regime where FSA requires public disclosure of short positions of 0.25 percent in financial services companies and in any firm carrying out a rights issue. At consulting stage, CESR proposed the initial threshold for private disclosure be set at 0.1 percent and in light of feedback from the consultation “and some additional fact-finding by the UK FSA” decided to raise it to 0.2 percent.

### **Why did CESR develop this pan-European regime?**

During the depth of the financial crisis, when faced with concerns about the threat to financial stability and the associated risks of disorderly markets and market abuse, numerous regulators and governments (both inside and outside EU) introduced restrictions on short selling and/or disclosure obligations in various forms in attempts to stabilise markets, many of which remain in place.

As a result of the activity on short selling regulation and cognisant of market participants' concerns about the onus of having to comply with a range of different sets of national requirements, CESR decided to initiate a review of policy on short selling with a view to setting uniform pan-European standards. In CESR's own words: “Legitimate short selling plays an important role in financial markets... contributes to efficient price discovery, increases market liquidity, facilitates hedging and other risk management activities and can possibly help mitigate market bubbles.”

However, CESR also believes that short selling can be used abusively to drive down share prices, contribute to disorderly markets and, in extreme circumstances, otherwise adversely impact financial stability. CESR does not consider those risks are confined to the financial sector. The improved transparency will bring informational benefits to the market and is expected to help constrain “aggressive large-scale short selling” that could threaten market stability, and provide regulators with early warning signs of a build-up of short positions with the potential for abusive behaviour.

CESR is expected to issue further recommendations in relation to the mechanism of reporting and contents of disclosure reports. It will also continue to monitor the situation in relation to short selling and the operation of the new disclosure requirements. CESR continues to consider whether further measures for the regulation of short selling, beyond disclosure, are required.

We are monitoring this area and will bring any significant developments to your attention.

[\[1\]](#) The role of CESR is to improve co-ordination among securities regulators throughout the EU, to assist the European Commission, in particular in its preparation of draft implementing measures in the securities field, and to ensure more consistent and timely day-to-day implementation of community legislation in the member states. Each member state of the EU has one member in CESR.

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