

**EUROPEANISSUERS COMMENTS  
ON  
IOSCO'S CONSULTATION REPORT ON THE REGULATION OF SHORT SELLING (MARCH 2009)**

POSITION  
12 MAY 2009

EuropeanIssuers welcomes the Consultation Report issued in March 2009 by IOSCO's Technical Committee on the regulation of short-selling, hereinafter the Consultation Document. EuropeanIssuers supports the regulation of short-selling activities on a permanent basis. We believe that measures should be taken among others to prevent and condemn abusive short-selling practices. Practices that are built only on speculation that the price of a given share will fall can be abusive since they are often accompanied by intentional acts. Such acts seek to effectuate the very downward price movement of the share which has been predicated by the short sellers' trades.

EuropeanIssuers expresses its support for the regulatory approach proposed in the Consultation Document, especially as regards the first three of the four principles proposed:

- a) Short selling should be subject to appropriate controls to reduce or minimize the potential risks that could affect the orderly and efficient functioning and stability of financial markets.*
- b) Short selling should be subject to a reporting regime that provides timely information to the market or to market authorities.*
- c) Short selling should be subject to an effective compliance and enforcement system.*
- d) Short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development.*

EuropeanIssuers already promoted, at its own initiative, similar proposals regarding the regulation of short-selling at a European level<sup>1</sup>, and we are pleased to see that IOSCO's Technical Committee, a high level group of technical experts, came up with proposals that go in the same direction and are based on similar regulatory principles. This shows in the most emphatic way that both industry and technical experts agree on the need of an

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<sup>1</sup> Cfr. EuropeanIssuers' [position paper](http://www.europeanissuers.eu/mdb/position/173_CESR_shortselling_callevidence_Europeanissuers_comments_090211_final.pdf) dated 11 February 2009 on the Regulation of short-selling by CESR at [http://www.europeanissuers.eu/mdb/position/173\\_CESR\\_shortselling\\_callevidence\\_Europeanissuers\\_comments\\_090211\\_final.pdf](http://www.europeanissuers.eu/mdb/position/173_CESR_shortselling_callevidence_Europeanissuers_comments_090211_final.pdf).

effective regulation of short-selling, and, on the principles of the regulatory tools that need to be introduced towards such a goal.

With respect to the details of the proposed approach, EuropeanIssuers would like to emphasize the necessity of finding a common definition or at least a common basis of understanding of the various types of short selling activities and, in particular, of the so called “naked short-selling”. EuropeanIssuers believes that in the absence of a proper identification of the typology of short-selling activities, regulation may not be effective.

***a) Short selling should be subject to appropriate controls to reduce or minimize the potential risks that could affect the orderly and efficient functioning and stability of financial markets.***

Regarding the first principle proposed, EuropeanIssuers has the view that any regulatory approach must, without any doubt, go beyond regulation for strict settlement of failed trades. As suggested in the Consultation Document as alternative or additional regulatory approaches, other regulatory tools must be implemented such as introducing eligibility criteria for stocks that can be sold short, pre-borrowing or “locate” requirements, price restriction rules, or “flagging” of short sales. Total banning of the so called naked short-selling is an approach that EuropeanIssuers fully supports. On top of that, from an EU perspective, EuropeanIssuers has already proposed the following alternative measures:

i) Although not all short-selling practices amount to market abuse, current short selling practices need closer scrutiny from a market abuse viewpoint. The market abuse regimes have to be checked so as to ensure that the rules cover also malpractices related to short selling and that these rules be effectively enforced. It would be helpful in that respect to have a common understanding, at a global level, on accepted market practices in short selling, banning or, at least, subjecting all other practices to greater scrutiny by the relevant authorities.

ii) Stock lending should also be regulated as the other side of the same coin. To that effect special attention should be given to the ability of investment firms to use a client’s assets upon his/her prior approval as authorized under Art. 19, par 1 of the implementation of the Market in Financial Instruments Directive (MiFID) that allows any custodian to use its clients’ assets for his own account or the account of other clients provided the depositing client agreed thereto.

***b) Short selling should be subject to a reporting regime that provides timely information to the market or to market authorities.***

Regarding the second regulatory principle, EuropeanIssuers believes that there are no compelling arguments to support the claim that markets will not benefit from any relevant disclosure. To the contrary, disclosure further enhances market efficiency as short sellers could easily take advantage of asymmetric information by abusively spreading rumours and extracting huge profits in a very short period of time. In addition, EuropeanIssuers believes

that disclosure of short positions does not only lead to market efficiency but is also a question of good corporate governance. Indeed, a short seller clearly does not “believe”, by taking such a position, in the prospects of the issuer, at least in the short term. EuropeanIssuers already proposed that:

i) Both the market and the issuer should be aware of any investor’s open and/or uncovered positions (both in voting rights and/or other economic positions) with respect to a specific issuer’s securities, individually and collectively, that exceed specific thresholds. Positions of entities of the same group, or affiliated parties or of parties acting in concert should be aggregated.

ii) In case the aforementioned threshold is reached and the relevant notification is made, the issuer should be able to ask the holder of the disclosed short position to make his/her intentions public.

iii) Regulated entities (investment firms, credit institutions, UCITS etc) should disclose to the relevant authorities their short to long positions ratio on their total portfolio basis or per issuer, or their client’s portfolios ratios that exceed specific thresholds and/or short positions that exceed specific thresholds in absolute terms.

iv) The above thresholds must be lowered in special circumstances, for instance when a takeover is announced or a rights issue undertaken.

EuropeanIssuers also welcomes the view expressed in the Consultation Document that disclosure must also cover derivative positions, regardless of any technical difficulties associated with such a proposal.

***c) Short selling should be subject to an effective compliance and enforcement system.***

EuropeanIssuers fully supports the third principle proposed in the Consultation Document as it already made relevant proposals for regulatory coordination at EU level.

***d) Short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development.***

EuropeanIssuers would like to express its concern on any exemptions from the first three principles, since such an approach may leave room for “creative compliance” with regulatory requirements. Although there may be some arguments to exempt certain activities from regulatory requirements, the exemptions should be defined very carefully, strongly justified and supervised to avoid abuses as IOSCO argues (3.40). For example, EuropeanIssuers fails to see any compelling argument for a general exemption for cases of hedging. Issuers (and their shareholders) are interested in knowing who is economically interested and invested in a company

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