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EUROPEAN COMMISSION'S PUBLIC CONSULTATION RELATING TO SHORT SELLING

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FBF RESPONSE

(English Version)

The French Banking Federation (hereinafter FBF) is the professional body representing the interests of the banking sector in France. It encompasses all credit institutions approved as banks, carrying out their activities in France, i.e. more than 450 commercial and cooperative banks. FBF member banks have 40,000 permanent branches in France, 400,000 employees and 60 million customers.

1. On 2 June 2010, the European Commission published a public consultation document containing proposals aimed at controlling the practice of short selling and thus allowing the implementation of a harmonised European system.

The FBF widely approves this initiative. The existence of unharmonised national systems on this issue is detrimental to their effectiveness and imposes costs and administrative red tape on market players. It therefore acts as a brake on the policy of integration which is actively promoted in the area of financial market activities. In view of the global nature of the markets concerned, the FBF favours a coordinated approach at international level.

2. The FBF fully shares the Commission's opinion that the efficiency of the price discovery process is a major issue: short selling is indeed the only way for persons who have not previously purchased the security to contribute to this process by effectively expressing the opinion that the security is overvalued, and therefore curb or even counter the speculative bubble phenomena in which the holders of securities are by nature involved. Moreover, this approach appears to be shared by international regulators since according to the OICV Technical Committee, *"short selling plays an important role in the market for a variety of reasons, such as providing more efficient price discovery, mitigating market bubbles, increasing market liquidity, facilitating hedging and other risk management activities*" and "*The primary objective of (the) regulation would be to reduce the potential destabilising effect that short selling, used in an abusive manner, can cause without exerting undue impact on securities lending, hedging and other types of transactions that are critical to capital formation and to reducing volatility (such as those used for risk management purposes)*".

Regulatory action appears to be particularly necessary since short selling is often considered by public opinion to be partially responsible for the financial crisis. This lack of supervision has something of the nature of the lack of confidence currently being experienced by the financial markets: it is a factor hindering the markets from returning to an optimum financing capacity for the economy, and therefore participating fully in its recovery.

3. The context in which the FBF wishes to contribute to this consultation is as follows: defining measures that respond to the strong expectations expressed while at the same time safeguarding the fundamental importance of the practice of short selling for the efficiency of the price discovery process.

Consequently, the FBF believes the European short selling regime should focus on the following areas:

- **A harmonised European approach to short selling regulations.**

- **Recognition of the usefulness of short selling for the efficiency of the price discovery process and liquidity.**

- **The FBF is not in favour of banning short selling in normal market operating circumstances.**

- **The possibility for the regulator** (as a matter of urgency at national level, within the framework of European harmonisation), in situations where financial stability appears to be threatened, **to temporarily supervise the practice of short selling for equities.**

- **Obligations to report to the regulator regarding short positions involving equities, bonds, CDS,** enabling the regulator, firstly, to assess market trends and the need to use additional supervisory measures, and secondly, to be able to effectively curb any market abuse.

- **Market makers should be exempted from any short selling requirement.**

- **However, the FBF has considerable reservations regarding measures aimed at making net short positions public.** While the main objective is to deal with situations where financial stability is threatened, it is highly probable that the publication of information showing that the price is considered to be overvalued triggers or accelerates a downward movement.

- **The FBF believes that if measures are taken in respect of short selling, they should be differentiated based on whether they are targeting:**

    - **on the one hand, equities and associated derivatives,**
    - **on the other hand, government debt, associated interest rate and credit derivatives (sovereign CDS).**

  The segments and functioning of the markets concerned, as well as the impact on issuers and liquidity, can be very different. While it is conceivable, in order to achieve market discipline in exceptional circumstances, for regulators to recommend short selling bans covering a segment of the equity and equity derivative markets, we believe a ban on short selling in the sovereign bond markets, in their interest rate derivatives (in organised and OTC markets) and credit derivatives (sovereign CDS) and finally in structured products with a sovereign underlying to be relatively unrealistic due to the continuity of these markets and their international interconnection. Whatever the scale and cost of implementing such a ban, this will never make it possible to effectively regulate these operations outside the European Union and is even likely to be incomplete and circumvented at European level.

- **In the case of CDS,** the FBF believes that banning naked CDS on sovereign bonds is unlikely to constitute an appropriate response to the erroneous claim that these would contribute to artificially widening sovereign bond spreads. Moreover, the FBF will welcome the possibility it may be given of explaining the validity of a regulation on sovereign bond CDS once the European Commission has made public the findings of its enquiry into the trading of CDS on government bonds in European countries, as wished for by France, Luxembourg, Germany and Greece in March 2010.

As an additional response to the European Commission's questions in the present consultation document, the FBF also wishes to highlight and refer the Commission to the findings of the "Rapport du groupe de travail sur les ventes à découvert" *(Working group report on short selling)* prepared, in France, within the AMF (*French Financial Markets Authority*) under the supervision of Mrs. Marie-Ange Debon and Mr. Jean-Pierre Hellebuyck made public in February 2009[1].

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[1] http://www.amf-france.org/documents/general/8731_1.pdf

A. SCOPE

(1) Which financial instruments give rise to risks of short selling and what is the evidence of those risks?

In order to answer this question, it is first necessary to precisely define what is meant by the term "short selling", which covers different types of reality depending on whether it refers to cash products or derivatives.

- Cash products.

  Short selling consists in selling such a product before having actually purchased it. That said, the fact of short selling does not in any way exempt the seller from the obligation of delivering the securities on the date specified by the contract constituted by the conclusion of the transaction, with this date generally being three days after the negotiation.

- Derivatives.

  The application of the term "short selling" to derivatives appeared recently during the Greek crisis where the use of credit derivatives (CDS) was blamed for triggering the sharp fall in Greece's sovereign debt and, correlatively, the sharp rise in its refinancing rate in the markets.

  Likened nevertheless to short selling, the use of CDS in the Greek case characterises an extension of the notion in relation to a dual issue:

  - Firstly, the use of a derivative providing protection against the decline of an underlying asset that is not owned by the purchaser of the protection;
  - Secondly, the sale of the underlying asset that the seller of the protection can carry out in order to hedge the risk created for him by the derivative.

  Therefore short selling of a derivative can only be likened to the short selling of a cash product insofar as the seller of the protection also sells the underlying asset in the market before having actually purchased it. In addition and in reality, it is therefore a matter of knowing whether a derivative offering protection in the event of a decline in the value of the underlying should be a product that can only be used by those that have an actual risk to hedge because they possess the underlying in their portfolio.

  The fact remains that by using a derivative, a player can arrive at the same result as by short selling the underlying. Firstly, he "bets" in the same way on the overvaluation of the product. Secondly, he leads the seller of the protection to sell the underlying in order to hedge his risk ; nevertheless, the number of securities sold in this case only represents a more or less high percentage of the total number of securities to which the protection relates[2].

In the context thus recalled, the FBF generally subscribes to the introductory observations expressed by the European Commission according to which "*It appears however that in some situations [short selling] can be used in an abusive fashion to drive down the price of financial*

[2] According to the situation of the establishment selling the protection and its need in terms of hedging the risk thus created, more or less offsetable with other operations carried out.

instruments can contribute to disorderly markets and, especially in extreme market conditions, can amplify price falls and have an adverse effect on financial stability. It can also result in information asymmetries. In the case of uncovered short sales there may be an increased risk of settlement failures and price volatility".

However, it appears to be necessary to highlight a few points.

- Although short selling cannot itself constitute market abuse, there are situations where it can be a means of committing market abuse. Since such situations must be curbed through the existing system for market abuse, the issue is firstly to establish whether the supervisory authorities have sufficient information to easily detect such abuse.

- The main risk associated with short selling is the amplification and acceleration of downward movements and volatility that it can create in situations where the market is particularly nervous. However, the observation of a sharp but limited downward adjustment does not appear to be sufficient to justify the supervision: rather what apparently needs to be examined is a series of sharp adjustments, often characteristic of a crisis situation, which can represent a threat to financial stability.

- The issue of information asymmetry linked to short selling needs to be clarified, notably to ensure that it is not related either to market abuse or to a threat to financial stability. The nature of the underlying problem here does not actually come to light.

  Similarly, the link between naked short selling and volatility also needs to be explained, especially in view of the reformulation of the definition of the notion of naked short selling that is also proposed.

(2) What is your preferred option regarding the scope of instruments to which measures should be applied?

With regard to the segmentation described previously between cash products and derivatives, neither Option A, nor Option B can be deemed adequate. The measures need to be adapted with respect to these two product categories, given the vastly differing contexts of each of them.

In any case, the FBF believes it is important to take account of the differentiation of the markets:

- sovereign debt and the derivatives for which it is the only or main underlying;
- the shares of financial companies;
- other shares admitted to trading on a European regulated market.

It is worth remembering that the debt markets are by nature different from equity markets. A player can actually be simultaneously a buyer and seller of two bonds (sovereign) issued by the same issuer but having a different maturity: this player will not have a negative net position or net short position on the issuer concerned: the measures aimed at restricting overshooting should not theoretically apply in this type of situation and the publication of "sales" in the market will be misleading.

(3) In what circumstances should measures apply to transactions carried on outside the European Union?

The answer to this question is not a matter of knowing whether certain circumstances can justify applying European rules outside Europe, but to what extent these rules can actually be applied to parties and transactions outside European territory.

Incidentally, once the transactions have been carried out, how can we apply any sanction to the persons that have performed them?

This issue which appears to be a well-recognised fact in the case of derivatives, highlights the need to develop international coordination in this area in order to ensure that the supervision implemented by Europe is not a source of commercial opportunities for players not subject to its regulations, to the detriment of the objective of maintaining financial stability.

Accordingly, we stress the need to look for an international approach on the subject.
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B. TRANSPARENCY

(4) What is your preferred option in relation to the scope of financial instruments to which the transparency requirements should apply?

The FBF is in favour of Option B. Once again, the issue is first and foremost to supervise very specific situations where short selling is considered to pose a threat to financial stability. From this viewpoint, the focus is firstly on sovereign debt and secondly on equities, and even in practice on the shares of financial companies which, as demonstrated by the actions carried out globally in Q4 2008, are the prime contributors to the maintenance of financial stability.

Whereas imposing obligations of transparency on players necessarily has related financial and administrative costs, Option A does not appear to generate sufficient benefits in relation to these costs. Obviously, this choice in favour of Option B will have to be re-examined if the trend showed that short selling practices were developing on other financial instruments and likely to threaten financial stability.

(5) Under Option A is it proportionate to apply transparency requirements to all types of instruments that can be subject to short selling?

See answer to question (4).

(6) Under Option B do you agree with the proposals for notification to regulators and the markets of significant net short positions in EU shares?

The FBF has no comment regarding the proposal made in terms of notification to the regulators. It is essential for the supervisory authorities to have good visibility on the positions taken, particularly in order to be able to carry out their role of curbing market abuse.

To ensure that this reporting achieves its objectives, it is nevertheless crucial to establish, in a harmonised manner, the practical conditions for this reporting (definition of net short position, timeframes, etc.), which implies that this role is clearly entrusted to ESMA. Moreover, it would appear to be very desirable for the reporting to be carried out at the level of each social entity, without any consolidation within the groups: this is in effect the only means of having a clear view of the real market situation, given that the different entities in a group can legitimately pursue separate objectives which will not be highlighted through global reporting.

However, the FBF is not in favour of providing information to the market and believes that further thought is absolutely essential in relation to two aspects:

- Firstly, while the main objective is, as should be the case, to deal with situations where financial stability is threatened, it is highly probable that publishing information showing that a number of players consider the price to be overvalued increases market nervousness and triggers a downward movement or even amplifies or accelerates it.
- Secondly, in "normal" market situations, where the short seller merely plays his natural role in the price discovery process, it is not certain that this information (which incidentally should actually be reflected in the prices) is not likely to put him at risk in relation to the market or to trigger purely opportunistic "follower" behaviour, and therefore as previously increase volatility or trigger or amplify a downward movement.

At this stage of its analysis, the FBF believes there is a very high risk in providing for the publication of this information for benefits that would need to be clarified.

(7) In relation to Option B do you agree with the proposals for notification to regulators of net short positions in EU sovereign debt (including through the use of CDS)? In addition to notification to regulators should there be public disclosure of significant short positions?

In terms of sovereign debt where the issues of financial stability are necessarily enhanced, the FBF has no reason to have a position other than its position on equities.

Therefore, the FBF is in favour of the proposals for notification to the regulators and maintains the same strong reservations in terms of public disclosure.

(8) Do you agree with the methods of notification and disclosure suggested?

Subject to the reservations expressed in terms of the appropriateness of disclosure, the FBF has no comments on the proposals.

However, the FBF questions the relevance of an approach whereby each competent authority will provide "*summary information to ESMA at least quarterly about net short positions in markets for which it is the relevant competent authority*".

While it is essential for ESMA to have the powers to intervene in an emergency situation when short selling appears to threaten financial stability (see answer to question 23), the process envisaged here seems to be very bureaucratic. What will be the contribution of ESMA based on this quarterly information?

(9) If transparency is required for short positions relating to sovereign bonds, should there be an exemption for primary market activities or market making activities?

Within the limits of the legal framework applicable to them, primary market activities and market making activities are necessary for the proper functioning of the market. To make this contribution, these activities need to be able to be conducted in "normal" conditions, i.e. by carrying out short sales (the market maker who provides a price to a counterparty should not have to verify whether he has the security in his portfolio; securities inventories are managed by independent teams, even if they work in close collaboration with the market making teams). Integrating these activities in a process for the disclosure of information to the market[3] would necessarily be likely to increase their exposure to opportunistic behaviour by other players and would increase market makers' risk. Moreover, this risk is not limited to the issue of sovereign debt but concerns all instruments that could come under the scope of the disclosure process with, in addition, an intensity directly linked to the liquidity of the instrument concerned and the number of players carrying out such functions on that instrument.

In any event, given that primary market activities and market making activities fall within a specific scope, an exemption appears to be even less open to criticism since it is always possible for market regulators to verify that these activities are not being conducted for purposes other than those normally applicable to them.

Within the framework of a possible exemption to a disclosure obligation, the FBF emphasises that it is essential to establish, at European level, a common and precise definition of the activities thus exempted. This need is particularly strong in the case of market making, with some regulators of Member States having rather different approaches to this activity.

This role must be entrusted to ESMA.

Since this also covers transparency in terms of reporting to the regulator, the FBF observes that the issue is less one of exemption than the adaptation of rules to ensure that useful data are communicated to the regulator.

(10) What is the likely costs and impact of the different options on the functioning of financial markets?

The FBF is not in a position to provide any specific information on this point.

C. UNCOVERED SHORT SALES

(11) What are the risks of uncovered short selling and what is the evidence of those risks?

Whereas, in general, public opinion views the practice of short selling very negatively, being unaware of its benefits and overexaggerating its drawbacks, the term "naked short selling" is generally used to condemn a form of short selling deemed to be particularly intolerable.

In this context, it is the responsibility of the regulatory authorities, and in particular the European Commission, not to reinforce the existing ambiguity by giving a definition of short selling that is not focused exclusively on the practices actually open to criticism.

- The FBF therefore believes that naked short selling cannot be defined as the situation "*where the seller has not borrowed the securities when the short sale occurs or ensured they can be borrowed"*, as proposed by the European Commission.

The FBF believes that the boundary between tolerable and intolerable situations must follow the line drawn by the jurisprudence of the French regulator (see answer to question (1)): **are inadmissible situations in which an operator cannot "reasonably" consider he is in a**

[3] However, transparency in terms of reporting to the regulator is not under discussion

position to deliver the securities within the prescribed time; he takes short positions without having "reasonable" assurance of being able, notably through resorting to the borrowing of securities, to proceed within the prescribed time with the delivery of the corresponding financial instruments. Inadmissible, since an operator is therefore permitted, deliberately and to the detriment of the orderly functioning of the market and the general interest, to economically arbitrate the attraction that a delivery default offers him.

Only these situations should be classified as naked short selling.

In contrast, classifying naked short selling in this way amounts to bringing into the definition of "straightforward short selling", all the situations in which the short seller has "reasonable" assurance of being able to proceed within the prescribed time with the delivery of the financial instruments sold.

Obviously this includes the situation described previously where the seller has first ensured that he was able to borrow the securities. However, this also includes situations in which he has no reason to doubt that he will subsequently be able, either to purchase them with delivery before he himself is obliged to deliver them, or to borrow them in order to be in a position to deliver them.

In this respect, the notion of "reasonable" may appear to be introducing an undesirable margin of assessment to the benefit of the operator. However, this is absolutely not the case, on the contrary: analysed *a posteriori*, the "reasonable" assurance is a means of taking into account, not only the information available to the operator in terms of ability to meet his settlement/delivery commitments, but also the information that he should have taken into account as a short seller, especially if he is a market professional.

Therefore with regard to the classification of naked short selling, it is necessary to analyse differently situations in which without first ensuring his ability to purchase or borrow the securities, the operator:

- had no reason to doubt that this purchase or borrowing would be possible given the market's possibilities;
- could not know that, given the short sale volumes and/or the market's possibilities, it would not be possible for him to proceed with this purchase or borrowing.

This approach reflects the functioning of capital market banks within which operators provide their clients with prices enabling them to trade as counterparty. If the securities lending/borrowing market is deep and liquid (normal market conditions), the operator will trade with his clients without intervening in the normal functioning of the lending/borrowing process (monitoring of securities inventories is carried out by the back office which transmits information to the operators in charge of lending/borrowing); however, if the lending/borrowing market is tighter (information communicated by specialised teams), the operator will not trade without having "legally" secured the borrowing necessary for the envisaged transaction (purchase of securities by the client/sale by the bank).

Imposing, under normal circumstances, the conclusion of a legal agreement prior to the sale would be very likely to negatively impact the securities lending/borrowing market since players (primarily asset managers) lending securities will generally prefer not to lend securities rather than to theoretically limit their freedom of choice, the possibility of selling the securities held at any time. A less liquid lending/borrowing market will in turn have a negative impact on the liquidity of the security concerned.

That said, we are very much in favour of a heavy sanction for operators deliberately putting themselves in a situation of not being able to deliver the securities concerned.

(12) Is there evidence of risks of uncovered short sales for financial instruments other than shares (e.g. bonds or sovereign bonds), which would justify extending the requirements to these instruments?

The FBF believes there is too little convincing information to suggest that naked short selling, both on bonds and via CDS, can have a negative impact on bond market spreads.

Moreover, several regulators (BAFIN and CESR in particular) have examined this issue and have not been able to provide evidence of such a negative impact.

(13) Do you agree with the proposed rule setting out conditions for uncovered short selling? Do you consider that more stringent conditions could be put in place? If so please indicate which ones?
Do you agree that arrangements other than formal agreements to borrow should be permitted if they ensure the shares are available for borrowing at settlement? If so, why?

No. The FBF believes that, apart from exceptional market conditions, the seller has reasonable assurance of being in a position to deliver the underlying on the appropriate date.

(14) Do you consider that the risks of uncovered short selling are such that they should be subject to an upfront ban/permanent restrictions? If so, why?

No. See answer to question (11).

(15) Do you agree with the proposal requiring buy in procedures for settlement failures due to short sales? If so, what is an appropriate base period that could be specified before buy in procedures are triggered (e.g. T + 4)?

It is possible to envisage the implementation of specific buy in procedures for naked short sellers. However, it is a complex solution that requires establishing a link between a given transaction and a buy in procedure. Moreover, this complexity is reinforced by the fact that buy in procedures are in fact managed by the clearing houses which, not only do not receive all transactions (in particular OTC), but in addition act on net balances: the default of a short seller may therefore have no effect or a marginal effect on the balances of delivered securities which pass through the clearing house.

(16) Do you consider that there should be permanent limitations or a ban on entering into naked credit default swaps relating to EU sovereign issuers? If so, please explain why, including if possible any evidence relating to the use of naked CDS.

A permanent limitation or ban on naked CDS would have disproportionate effects in relation to the real issue at stake. Limiting the purchase of protection on a sovereign debt to those holding this sovereign debt substantially reduces the economic use that can be made of these naked CDS. Do we need to reiterate that using a CDS on a sovereign debt serves not only to hedge the risk associated with commitments in respect of the issuing country but also the risks related to other counterparties whose profile is considered to be similar?

(17) Do you consider that in addition to the measures described above there should be marking of orders for shares that are short sales?

Such marking only makes sense in terms of providing information to the market. As such, it refers back to the questions previously raised on the subject (see answer to question (6)).

Since this marking necessitates costly developments, it is necessary to ensure that its benefits are sufficient, which is far from being certain.

(18) What is the likely costs and impact of the different options on the functioning of financial markets?

The FBF believes that the solutions that it previously developed are reasonable in terms of cost/benefit assessment.

D. EXEMPTIONS

(19) Do you agree with the proposed exemption for market making activities? Which requirements should it apply to?

For reasons already outlined, the FBF is necessarily in favour of an exemption for market making (see answer to questions (9) and (13)), a notion for which a harmonised European definition needs to be adopted.

Moreover, the exemption should not concern only market making, but more generally all the activities, other than arbitrage, carried out by European financial institutions (see answer to question (11)). It is absolutely essential in this context that, as has already been highlighted (see answer to question (9)), the definitions of exempted activities are harmonised at European level by ESMA.

(20) Do we need any exemption where the principal market for a share is outside the European Union ? Are any other special rules needed with regard to operators or markets outside the European Union?

This question, however, highlights the competitive aspect and possible market shift in the absence of international regulations, given that these are activities that could be carried out outside the European Union.

(21) What would be the effects on the functioning of markets of applying or not applying the above exemptions?

The justification of the exemption is based on its beneficial effect for the proper functioning of the market.

E. EMERGENCY POWERS OF COMPETENT AUTHORITIES

(22) Should the conditions for use of emergency powers be further defined?

In relation to the main objective which should be pursued, the FBF considers it appropriate to base the implementation of emergency powers on the definition proposed by the European Commission, namely "*In the case of adverse developments which constitute a serious threat to financial stability or to market confidence in a Member State or the European Union"*. That said, supervision based on objective market data (volatility and liquidity in particular) would appear to be desirable.

(23) Are the emergency powers given to Competent Authorities and the procedures for their use appropriate?

The FBF considers the proposal made by the European Commission to be appropriate.

Even though it has reservations regarding the appropriateness of including instruments other than equities, bonds and sovereign debt CDS, it believes that the conditions for implementing these emergency powers (see answer to question (22)) are likely to naturally limit their use to certain financial instruments (sovereign debt and shares of financial institutions first and foremost).

However, with regard to the issue of European harmonisation, the FBF believes that the procedures for the use of these emergency powers are not appropriate. It proposes the following:

- Each competent authority of a Member State should have the possibility of implementing these emergency powers for a limited period (2 or 3 weeks maximum), renewable once. In this context, notifying ESMA first would be desirable but not obligatory.

- ESMA should have the powers provided for by the European Commission but should also have:
  - the possibility of extending the measures taken by one Member State to the other Member States;
  - the ability, alone, to extend the measures taken beyond the limited period granted to each Member State, and therefore beyond 4 or 6 weeks.

In any case, this "transfer" of competence to the level of ESMA seems to be necessary with regard to euro zone countries for which it is difficult to imagine the issue of their financial stability not being assessed on a collective basis.

From this viewpoint, it would also be advisable to examine the conditions for decision-taking by ESMA, since only the euro zone authorities should be able to vote.

(24) Should the restrictions be limited in time as suggested above?

As highlighted previously, the restriction period should be much more limited at the level of the Member States than provided for by the European Commission. It is necessary to focus on emergency situations, with ESMA alone having the ability to extend the restrictions over a long period.

In this context, a situation could be imagined where ESMA acts for periods of 6 months, extendable with at least 15 days notice.

(25) Are there any further measures that could ensure greater coordination between competent authorities in emergency situations?

The best assurance for effective coordination consists in ensuring that once the initial emergency is over, decisions are taken at the level of ESMA.

(26) Should competent authorities be given further powers to impose very short term restrictions on short selling of a specific share if there is a significant price fall in that share (e.g. 10%)?

This proposal cannot be accepted when there are suspension measures designed to manage this type of situation in the best interests of the proper functioning of the market. This could unjustifiably affect the role of short selling in the price formation process.

In any case, it is difficult to imagine that an individual situation can characterise the threat to financial stability that is the basis for the implementation of emergency powers.

F. POWERS OF COMPETENT AUTHORITIES

(27) Should the power to prohibit or impose conditions on short-selling be limited to emergency situations (as set out in the previous section)?

The answer is necessarily yes, the main basis being the threat to financial stability.

(28) Are there any special provisions that are necessary to facilitate enforcement of the future legislation in this area?

The effective implementation of the new system is directly linked to the authorities' ability to detect situations that merit a specific investigation by them, notably with regard to the reasonable assurance that the short seller had of being able to deliver on the due date.

The proposed rules in terms of disclosure are therefore absolutely essential from this viewpoint.

(29) What co-operation powers should be foreseen for ESMA on an ongoing-basis?

It is particularly important for ESMA to be able to promote a harmonised interpretation of what constitutes for a short seller reasonable assurance of being able to deliver on the due date. ESMA must also clarify the definition of activities that would benefit from exemption or specific measures, such as market making, as well as the practical procedures for reporting to the regulators and, if necessary, the market, if despite the questions this raises, the latter solution were retained (see answer to question (6)).

G. GLOSSARY OF DEFINITIONS

(30) Do the definitions serve their intended purpose?

The notion of short selling should be defined as indicated previously (see answer to question (1)).

The notion of naked short selling should also be defined as indicated previously (see answer to question (11)).