



SJ – n°2560 /Div.

Mr Greg Tanzer
Secretary General
International Organization of
Securities Commissions
C/ Oquendo 12
28006 Madrid
Spain

4th May, 2009

Re: ASSOCIATION FRANCAISE DE LA GESTION (AFG)'s comments on IOSCO
Consultation Report regarding the Regulation of Short Selling

Dear Mr Tanzer:

The ASSOCIATION FRANCAISE DE LA GESTION (AFG)¹ would like to thank IOSCO for having solicited comments on its Technical Committee Report regarding the Regulation of Short Selling.

¹ The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 409 management companies and 660 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing 2400 billion euros in the field of investment management. In terms of financial management location, it makes the French industry the leader in Europe for collective investments (with 1300 billion euros managed by French companies, i.e. 23% of all EU investment funds assets under management, wherever the funds are domiciled in the EU) and the second at worldwide level. In terms of fund domiciliation, French funds are second in Europe and third at worldwide level. Regarding product interests, our association

General Comments

1. Short selling is not intrinsically a bad thing that should be banned. See for example Abraham Lioui's study on "The Undesirable Effects of Banning Short Sales" published by EDHEC Risk and Asset Management Research Centre in April 2009. Any regulation should be based on a thorough cost/benefit analysis and subjected to the level-playing-field principle.
2. Although we recognise the value of the IOSCO Report, we are surprised that IOSCO sets 4 principles surrounding short selling without having succeeded to define first what short selling is. In paragraph 1.1 of the Executive Summary, IOSCO recalls that the aim of the Task Force was to eliminate gaps in various regulatory approaches to naked short selling. But in Appendix III, IOSCO recognises that the definition of short selling differs from one jurisdiction to another.
3. The tricky consequence is that for instance IOSCO provides for a non-limited list of circumstances where the seller is considered as owning the stock. But as this list is non-limited, there remains some legal uncertainty for market participants when they trade, to know if they can be considered or not as owning the stocks.
4. This point is the central one for our 400+ management company members: how to make sure that they are on the safe side when trading abroad, regarding short selling restrictions or notifications?
5. In our view, two approaches should be considered:
 - a. The best solution would be worldwide regulators, at IOSCO level, to find a single definition. Unfortunately, it appears that IOSCO has not succeeded in this approach (until now);
 - b. A second best solution would be at least for IOSCO to set up a central and public regulation database where it would bring updated and clear information on short selling, jurisdiction by jurisdiction.
6. Otherwise, we are afraid that market participants will still stay at legal, reputational and financial risks when trading on foreign markets – which is very common for investment managers.

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represents – besides UCITS – the employee saving scheme funds, hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

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Detailed comments

a. First Principle: appropriate controls to reduce risks for market stability

We fully agree that an effective discipline for settlement of short selling transactions is crucial. France has set up a very strict settlement regime for many years which appears today as an interesting and positive case for reducing the risk of settlement in case of short selling.

b. Second Principle: timely reporting regime to the market or to market authorities

We agree enhanced and meaningful reporting of short selling to be the second pillar of an effective short selling regulatory regime. However, it does not fully make sense to require a common principle on short selling reporting while IOSCO has not succeeded in preventing different definitions of short selling from one jurisdiction to another: the reportings will not cover the same situations from one country to another.

In addition, even for the reporting itself, we understand that IOSCO wants to keep the current two types of reporting, i.e. either flagging of short sales or short positions reporting.

Furthermore, IOSCO seems to leave up to each regulator the decision on whether or not to include derivatives in its short selling reporting regime. In particular, we are surprised that derivatives may not be included in some countries' reportings, as then the short selling reporting requirement may be easily circumvented.

IOSCO also allows each regulator to decide on the frequency and timing of reporting to markets and/or market authorities.

This "fully non-harmonised" situation implies clearly for us that there is an urgent need for setting up an updated central database accessible on IOSCO website, as a way for market participants to get clear information on short selling definitions and reporting regimes for each jurisdiction.

c. Third Principle: effective compliance and enforcement system

We agree as well on this principle, but once again if the regulations are not harmonised from one jurisdiction to another, it will generate a high legal, reputational and financial risk for investment managers trading abroad. At least a publicly accessible centralised and updated database on IOSCO website should facilitate access to information by market participants.

d. Fourth Principle: allowing for appropriate exceptions

Of course market participants agree on getting appropriate exceptions, instead of a one-size-fits-all approach, and for clear definitions of such exceptions at national levels. But once

again, such appropriate exceptions should be made easily accessible to market participants at IOSCO level. And in any case it will stay as a second best as compared to a common definition of short selling with a common list of appropriate exceptions, provided by IOSCO.

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We thank you in advance for your attention to the views expressed above.

If you wish to discuss the contents of this letter with us, please contact myself at +33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr) or Stéphane Janin, Head of International Affairs Division at +33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Sincerely,

Pierre BOLLON