



National Investor Relations Institute

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May 4, 2009

Mr. Greg Tanzer via e-mail: ShortSellingReport@iosco.org.  
Secretary General  
IOSCO  
C / Oquendo 12  
28006 Madrid  
Spain

Re: Regulation of Short Selling  
Public Comment on Regulation of Short Selling

Dear Ms. Tanzer;

This letter is submitted on behalf of the National Investor Relations Institute (NIRI). NIRI is the United States of America's professional association of corporate officers and investor relations consultants responsible for communications among corporate management, shareholders, securities analysts and other financial community constituents. Founded in 1969, NIRI is the largest professional investor relations association in the world with more than 4,000 members representing 2,000 publicly held companies and approximately \$5.4 trillion in stock market capitalization.

NIRI, a member of GIRN – the Global Investor Relations Network – is pleased to have the opportunity to comment on the current IOSCO consultation on short selling. We appreciate your leadership in trying to establish appropriate and common short selling regimes around the world.

#### Introduction

We agree with the theme of your consultation that short selling is a legitimate activity which, among other benefits, provides liquidity in companies' issued shares and aids accurate price formation.

We also share your view that short selling is open to potential market abuse, which should be eliminated. An effective deterrent to this is disclosure. We will not comment on the legal aspects of how to regulate enforcement actions, however, representing public companies in the United States, we have strong views on disclosure and its administration.

We believe that public companies and the wider market should have full and unrestricted access to information on who owns and can influence a company's shares – whether the positions are long or short. Unfortunately this is currently not a uniform process around the world, creating many anomalies. For example, UK companies know, through very

detailed public disclosures, those U.S. investors who own their shares, while U.S. companies have much more out of date and restricted information on their U.S. investors. Thus, your consultation looks to address an important area which has not been widely acted upon thus far.

Following the format of your ‘principles’ we would like to comment as follows:

1. First Principle. *“Short selling should be subject to appropriate controls to reduce or minimise the potential risks that could affect the orderly and efficient functioning and stability of financial markets.”*

As noted above, NIRI believes that short selling plays a useful role in relation to companies’ shares. Consequently we support the creation of an appropriate regulatory regime, supported by appropriate short position disclosure requirements.

2. Second Principle

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

We agree with this principle, and with the underlying purpose of achieving orderly markets, free of market abuse. However, we believe that companies should be able to know who owns or can influence their shares. We note that there are significant differences in the current disclosure regimes applicable to *long* positions, which should also be addressed. The breakout box describes briefly the system of proactive identification available in some countries but not others, which creates an unlevel playing field for companies.

Further, we note that this system of proactive disclosure does not currently extend to synthetic ownership, in the form of Contracts for Difference, equity swaps, and other derivatives.

#### **Proactive disclosure**

In some countries, including UK, Australia, South Africa, France and most recently Germany, public companies have access to the provisions of company law, which allow them to require disclosure of the beneficial ownership of their shares.

In practice, a company would examine its shareholders’ register, and note that a holding was identified in a street name or nominee. The company can then write to that nominee, requiring that the underlying, beneficial holder be identified.

Refusal allows the company to apply to the courts for sanctions, including withholding of dividends, removal of the vote, and ultimately the disenfranchisement of the share entirely. Because this is now a well established procedure, in practice these sanctions are rarely needed.

For their part, companies are obliged to create an index of responses, and to allow inspection of that index.

The result is that companies registered in those countries have much greater visibility of their shareholders than in others, creating an imbalance in how companies can proceed.

We would encourage IOSCO to take the disclosure of long positions into account, when considering those of short positions.

Your consultation also seeks feedback on specific issues:

a) Equity shares and derivatives.

NIRI believes that derivatives play such an important function in the markets that to exclude them from short position reporting would remove much of the benefit of a disclosure regime on short positions. We also note that Hong Kong has successfully introduced a short selling disclosure regime, including disclosure of derivative positions.

b) Net or gross position reporting.

IOSCO should encourage regulators to establish disclosure on the basis of net positions. This avoids the risk of potential double counting of positions.

c) Frequency of reporting.

We believe that daily, end of day, reporting provides the maximum benefit without incurring substantial systems costs for reporters. The issue of an appropriate threshold is difficult, and needs to consider a number of issues, almost all at a national level. These include the existing transparency arrangements for long positions, whether a proactive right to establish ownership exists in the country, and the scale of short selling in each regime.

d) The responsibility for reporting.

We agree with your view that only the investor has a sufficient overview of all positions that allow for accurate reporting.

e) Flagging of short sales.

Flagging of short sales is useful additional information, and as such should be required by national regulators. However it is not a substitute for positional reporting.

3. Third Principle. *“Short selling is subject to an effective compliance and enforcement system.”*

NIRI agrees with this statement and has no additional comment on enforcement by multiple regulatory agencies.

4. Fourth Principle. *“Short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development.”*

Given the fast pace of market structure development, we believe there is considerable risk in trying to identify and define activities which should be excluded from reporting. We would prefer to see each exclusion considered on a case by case basis with the ability to reasonably ensure there is not abuse of the exception.

Conclusion

NIRI hopes these comments are helpful to IOSCO as it deliberates short selling regulation. Thank you for accepting our comments on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey D. Morgan". The signature is fluid and cursive, with the first name "Jeffrey" written in a stylized, overlapping manner.

Jeffrey D. Morgan, CAE  
President & CEO