



9 March 2012

EUROCLEAR S.A./N.V.
1 BOULEVARD DU ROI ALBERT II
B-1210 BRUSSELS, BELGIUM

ESMA consultation on draft Delegated Acts on Short Selling

Euroclear response

We are pleased to be given the opportunity to offer Euroclear's¹ views on ESMA's consultation on possible Delegated Acts concerning the Short Selling Regulation.

Euroclear is registered on the European Commission's register of interest representatives - ID number 88290282308-75.

As part of its securities settlement services to financial markets, Euroclear Bank offers its clients a Securities Lending and Borrowing Programme which is designed to enhance settlement efficiency by avoiding settlement fails (however those fails might be caused). Our response is focused solely on the ESMA questions that relate to the treatment of securities lending in the definition of ownership of financial instruments and of the cases of holding of share and debt instruments (questions 1 and 4).

Q1: Do you agree with the proposal concerning Article 2 (1) (r) of the Regulation?

We agree with ESMA's proposal to exclude – under conditions - from the definition of short sales the cases whereby a person executes a sale of securities that are transferred under a securities lending agreement. We believe that the condition should be that the lender ensures that securities are available for settlement when it is due. In practice, this will often happen through an actual recall of the securities by the lender (or its agent) but there are also cases whereby the lender is replaced by another lender by its agent (lender substitution). To ensure that the latter case is also covered by the text, we propose the following amendment to the text in Box 1

¹ The Euroclear group is the world's leading provider of domestic and cross-border settlement and related services for bond, equity, fund and derivative transactions. User owned and user governed, the group comprises the international central securities depository Euroclear Bank, based in Brussels, as well as the national central securities depositories (CSDs) Euroclear Belgium, Euroclear France, Euroclear Nederland, Euroclear UK & Ireland and Euroclear Finland and Euroclear Sweden. Euroclear also owns Xtrakter, which operates the trade and transaction reporting services.



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§2 a: “the selling of financial instruments transferred under a securities lending or repo agreement if the transferor ensures that recalls the securities are available in time such as through a recall or lender substitution so that the settlement can be effected when it is due;”.

Q4. Do you agree with the above proposal? If not, please give reasons.

In line with the above, we believe that securities that are transferred under a securities lending agreement should be included in the determination of a long position as the lender remains the owner of the securities. It is unclear if the text on Box 2 is sufficiently clear to actually cover this case.

Contacts

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