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IOSCO
Mr. Greg Tanzer
Secretary General
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**28006 Madrid
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Via E-Mail: ShortSellingReport@iosco.org

**IOSCO Consultation Report on Short Selling
Public Comment of DIRK**

Dear Mr. Tanzer,

we much appreciate the opportunity to comment on your current consultation on short selling, and applaud your leadership in trying to establish appropriate and common short selling regimes around the world.

DIRK – Deutscher Investor Relations Verband e.V. is the association for Investor Relations (IR) in Germany. As the organ of IR professionals, DIRK represents the concerns of its members in an active dialogue with interest groups and capital market stakeholders, political institutions and the general public. The association offers its members active, specific support and promotes regular exchange among its own ranks and with IR specialists from all over the world. With its more than 290 member companies, DIRK represents more than 90% of the publicly listed capital in Germany and sets the standards of communication between companies and the capital market.

DIRK is also a member of the Global Investor Relations Network (GIRN).

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.

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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 Germany, 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 a very patchy process around the world, creating many anomalies. For example, UK companies know, through very detailed public disclosures, those US investors who own their shares, while US companies have much more out of date and restricted information on their US investors. Thus your consultation looks to address an important area which has so far not been widely acted on.

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, DIRK 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 break out box describes briefly the system of proactive

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.

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.

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

DIRK believe 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.”*

DIRK 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.

We hope these comments are helpful to IOSCO as it deliberates short selling regulation.

Thank you for accepting our comments on this important matter.

Yours sincerely

DIRK – Deutscher Investor Relations Verband e.V.



Kay Bommer
- General Manager -