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COVER NOTE

from:	Mr Jean-Claude Trichet, President of the European Central Bank
date of receipt:	7 March 2011
to:	Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union
Subject:	OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a Regulation of the European Parliament and of the Council on short selling and certain aspects of credit default swaps (CON/2011/17)

Delegations will find attached ECB Opinion CON/2011/17 of 3 March 2011.

Encl.: CON/2011/17

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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 3 March 2011

on a proposal for a Regulation of the European Parliament and of the Council on short selling and certain aspects of credit default swaps

(CON/2011/17)

Introduction and legal basis

On 13 October 2010 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Regulation of the European Parliament and of the Council on short selling and certain aspects of credit default swaps[1] (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed regulation contains provisions affecting the contribution of the European System of Central Banks (ESCB) to the smooth conduct of policies relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

1. The ECB welcomes the main aim of the proposed regulation, which is to establish a Union regulatory framework to cover short selling and equivalent practices based on the use of credit default swaps (CDSs). The ECB notes that the proposed regulation incorporates many of the recommendations made in the 2010 Eurosystem contribution to the Commission's public consultation on short selling[2]. The 2010 Eurosystem contribution acknowledged that short selling may, in normal market conditions, contribute to efficient pricing of traded instruments and to maintaining market liquidity; however, it also pointed to concerns regarding the risks associated with short selling, such as the risk of disorderly market developments, market abuse and settlement failures[3]. The ECB broadly supports the Union's regulatory regime designed to address these concerns, comprising the proposed regulation and the amendments to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market

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1 COM(2010) 482 final.

2 See 'Commission public consultation on short selling – Eurosystem reply', 5 August 2010 (hereinafter the '2010 Eurosystem contribution'), available on the ECB's website at www.ecb.europa.eu.

3 See the 2010 Eurosystem contribution, response to question 1, p. 2.

manipulation (market abuse)[4] that are currently under consideration[5]. Such a uniform Union regime is necessary for the financial market integration in the Union, while it will also foster convergence with the rules adopted in other major financial centres, such as the United States[6]. The ECB will make detailed comments on the amendments to Directive 2003/6/EC when it is consulted on them in due course.

2. In line with the 2010 Eurosystem contribution[7], the ECB welcomes: (a) the transparency regime for short selling of shares following the two-tier model originally recommended by the Committee of European Securities Regulators[8]; and (b) the compulsory disclosure to competent authorities in relation to significant net short positions relating to sovereign debt issuers in the Union or of equivalent uncovered positions in credit default swaps[9]. The ECB supports requirements addressing the risk of settlement failures caused by uncovered short selling[10], following which natural or legal persons should not be allowed to enter into a short sale unless they have borrowed a share or sovereign debt instrument, have entered into an agreement to borrow, or will be able to borrow at the time of settlement on basis of a confirmed arrangement. Moreover, the ECB welcomes the proposals under which: (a) competent authorities will be granted harmonised powers to impose temporary restrictions on short selling and CDS transactions in exceptional situations, under the coordination of the European Securities and Markets Authority (ESMA)[11]; and (b) specific intervention powers will be attributed to ESMA itself, where there is a threat to the orderly functioning and integrity of the Union financial system[12].

3. The ECB notes that several Union regulatory initiatives, including the proposed regulation on central counterparty clearing and trade repositories[13] as well as the review of the Markets in Financial Instruments Directive ('MiFID') 2004/39/EC[14], aim at increasing disclosure requirements with respect to varying types of assets and reporting entities. The ECB welcomes this general direction, provided that careful attention is paid to ensuring consistency and avoiding overlaps or gaps. The Eurosystem has a strong interest in this area based on its statistical and financial stability functions and will follow the progress of this work in cooperation with the Commission.

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4 OJ L 96, 12.4.2003, p. 16.

5 See Commission consultation paper, 'Public consultation on a revision of the Market Abuse Directive (MAD)', 25 June 2010, available on the Commission's website at www.ec.europa.eu.

6 See the 2010 Eurosystem contribution, response to question 3, p. 4.

7 See the 2010 Eurosystem contribution, last paragraph of the introductory section, p. 2, and responses to questions 4-5 and question 6, pp. 4 to 5.

8 Notification and disclosure of net short positions in shares are required to be made to the regulators and to the market respectively, at two different thresholds. The threshold for notification to the regulators is the lower of the two (see Articles 5 and 7 of the proposed regulation).

9 See Article 8 of the proposed regulation.

10 See Articles 12-13 of the proposed regulation.

11 See Articles 16-23 of the proposed regulation.

12 See Articles 24 of the proposed regulation.

13 Proposal for a regulation on OTC derivatives, central counterparties and trade repositories, COM(2010) 484 final.

14 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directive 85/611/EEC and 93/6/EEC and Directive 2001/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

Specific observations

Scope

4. The ECB recommends[15] that sovereign debt instruments covered by the proposed regulation are defined as those which are issued or guaranteed by the entities belonging to the public sector of the Member States or of the Union, where the applicable definition of the 'public sector' should be the one already present in the Union secondary legislation[16]. Such legislative technique will have the benefit of excluding any unintended gaps, while also ensuring that the debt instruments issued by the ESCB central banks as part of the implementation of the monetary policy are not classified as sovereign debt instruments, which would be contrary to the prohibition of the central bank financing of the public sector expressed in Article 123 of the Treaty.

5. Certain specified market making and primary market activities are exempted from the transparency and regulatory interventions regime envisaged by the proposed regulation[17]. This exemption is justified since, *inter alia*, smooth functioning of market making activities is crucial for many asset classes, including debt instruments issued by the Member States' public sector entities, to remain liquid and available as collateral in central bank monetary policy operations. On the other hand, potential abuses of the market making exemption should be avoided, in particular by ensuring that the proprietary business of a market maker does not benefit from this exemption[18]. The ECB recommends[19] that powers are delegated to the Commission to adopt relevant technical standards, on the basis of a proposal by ESMA which would adequately balance the above considerations. Such technical standards may consider: (a) detailed features of the market making activities benefiting from this exemption; (b) reporting procedures to disclose the market making activity to the competent authorities; and (c) portfolio structures and booking procedures to be used by market makers with a view to clearly identifying the character of a transaction as either market making or another type of transaction, and excluding the rebooking of transactions without a notification to the competent authority.

6. A further exemption from the regulatory regime established under the proposed regulation concerns activities supporting the stabilisation of prices during the offering of securities for a limited time period if they come under selling pressure[20]. As noted in the 2010 Eurosystem contribution[21], the ECB shares the Commission's assessment that stabilisation schemes are, like market making,

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15 See proposed amendment 5 in the Annex to this opinion.

16 See Article 3 of Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

17 See Article 15 of the proposed regulation.

18 See 2010 Eurosystem contribution, responses to questions 7 to 9, pp. 5-7; .see also recital 19 to the proposed regulation.

19 See proposed amendment 8 in the Annex to this opinion.

20 See Article 15(4) of the proposed regulation, together with recital 11 to and Article 2(7) of Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2003, p. 33).

21 See 2010 Eurosystem contribution, responses to questions 7 to 9, last sentence of second paragraph, p. 6.

legitimate activities that are important for the proper functioning of primary markets[22]. The ECB welcomes the fact that the exemption relating to stabilisation measures in the context of the short selling regime is defined in the proposed regulation by means of a reference to the definition used in the Union's regime for the prevention of market abuse[23]. At the same time, the ECB recommends[24] that powers are delegated to the Commission to adopt, on the basis of a proposal by ESMA, the implementing technical standards ensuring uniform application of the exemption for stabilisation measures under the short selling regime. Such technical standards would complement the technical standards developed with regard to the exemption for stabilisation measures under the market abuse regime[25]. Two separate sets of implementing technical standards are desirable in order to address the specific features of the two situations; this is also a matter of proper legislative technique.

Reporting and public disclosure standards

7. Under the proposed regulation, powers are delegated to the Commission to adopt, on the basis of a proposal by ESMA: (a) regulatory technical standards specifying the details of the information to be provided to the competent authorities with respect to net short positions exceeding the specified reporting threshold[26]; and (b) implementing technical standards specifying the means by which information will be provided to the public with respect to net short positions exceeding the specified public disclosure threshold[27]. The ECB recommends[28] specifying the legislative delegation to the Commission to the effect that the formats used for the purposes of reporting and public disclosure in such cases should allow for timely Union-wide consolidation and assessment of short selling positions affecting specific issuers. Consistency of reporting formats will be crucial for ensuring an effective response to potential market disturbances by ESMA and the competent national authorities, as well as, in relation to their respective competences, by the ESCB and the European Systemic Risk Board (ESRB).

8. Regarding the specific issue of the public disclosure obligations imposed on entities engaged in short selling[29], the ECB understands that the proposed regulation envisages that such disclosure will be performed through the use of officially appointed mechanisms for the central storage of regulated information, introduced as part of the Union's transparency regime for securities[30]. In principle the

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22 See the explanatory memorandum to the proposed regulation, last sentence of paragraph 3.3.4.

23 I.e. the Implementing Regulation 2273/2003.

24 See proposed amendment 9 in the Annex to this opinion.

25 See Article 8(2) of Directive 2003/6/EC, as introduced by Article 3(3)(b) of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 120).

26 See Article 9(5) of the proposed regulation.

27 See Article 9(6) of the proposed regulation.

28 See proposed amendments 2 (recital) and 6 in the Annex to this opinion.

29 See Article 7 of the proposed regulation.

30 See Article 9(4) of the proposed regulation, together with Article 21(2) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to

ECB supports this method of disclosure, while recommending[31] that it should be based on interactive reporting, using standard data formats, so as to allow efficient consolidation and flexible access to Union-wide information on an integrated basis. For instance, all disclosed information could be available through ESMA by way of centralised access to officially appointed mechanisms. This would reflect the cross-border implications of risks generated by short selling and the coordination role envisaged for ESMA under the proposed regulation.

Information sharing

9.1 The proposed regulation establishes information sharing arrangements between the competent national authorities and ESMA with respect to net short positions reported to those competent authorities. The ECB makes the following recommendations in this respect[32].

9.2 First, as a minimum, the proposed modalities for information sharing between the competent authorities and ESMA should become more efficient, in particular by allowing ESMA to make requests for real-time information sharing where this is necessary for it to perform its tasks effectively. In the longer term ESMA should obtain automatic access to all information reported under the proposed regulation. Hence, the ECB recommends that ESMA initiates work on establishing centralised Union information collection mechanisms that apply a common identifier of reporting entities and a minimum common taxonomy; such mechanisms should allow for flexible real-time access to information for policy purposes, while ensuring the confidentiality of the received data. The ECB considers that the establishment of such centralised mechanisms would help to overcome the limits inherent in the usage of uncoordinated micro-data pools and would also allow the information collected under the proposed regulation to be used in connection with other available datasets, minimising the administrative burden for the reporting entities and public authorities[33].

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information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

31 See proposed amendments 1 (recital) and 6 in the Annex to this opinion.

32 See proposed amendments 3 (recital) and 7 in the Annex to this opinion.

33 Relevant harmonising initiatives include: (i) the common framework for business registers established by Regulation (EC) No 177/2008 of the European Parliament and of the Council of 20 February 2008 establishing a common framework for business registers for statistical purposes and repealing Council Regulation (EEC) No 2186/93 (OJ L 61, 5.3.2008, p. 6); (ii) the ongoing work of the Commission concerning business registers (see Commission consultation, 'The interconnection of business registers' (COM(2009) 614 final)); and (iii) establishment of registers of financial actors provided for in amendments to the relevant directives introduced by Articles 2(1)(b), 4(1)(a), 6(1) and (16), and 9(3) of Directive 2010/78/EU and including the list of identified financial conglomerates, the register of institutions for occupational retirement provision, the register of investment firms, the list of regulated markets and the list of authorised credit institutions, respectively. In addition, databases on securities comprise, in particular: (i) list of financial instruments provided for in Article 11 of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004//39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transactions reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1); and (ii) the Centralised Securities Database of the ECB (see ECB, 'The "centralised securities database" in brief', February 2010, available at the ECB's website).

9.3 Second, the proposed regulation should also expressly provide for information sharing between ESMA and ESCB central banks in order to facilitate performance of the ESCB functions of collecting statistical data[34] and monitoring and assessing financial stability[35].

9.4 Third, the proposed regulation should provide for information sharing between the ESMA and the ESRB, with a view to facilitating the ESRB's collection of information for the performance of its tasks and identifying and prioritising systemic risks that may arise from developments within the financial system[36].

Intervention powers

10. The proposed regulation allows for the optional consultation by ESMA of the ESRB in relation to measures imposed in exceptional situations by ESMA with a view to addressing adverse effects of short selling[37]. The ECB recommends[38] that ESMA should also have the right to consult the ESRB when it is notified of measures introduced by the competent national authorities. Appropriate time constraints could be laid down to ensure the efficient handling of ESRB consultations[39]. The ECB notes that the consultation of the ESRB in relation to intervention measures undertaken under the Union's short selling regime would allow for appropriate incorporation of the macro-prudential perspective in the contemplated interventions. Moreover, the European Supervisory Authorities (ESA), including ESMA, must cooperate closely with the ESRB and provide it with all information necessary for the fulfilment of its tasks in a regular and timely manner[40], while the ESRB may request additional information from the ESA[41]. Provisions envisaging the consultation of the ESRB by ESMA on contemplated short selling interventions will allow the ESRB, first, to make an informed and timely assessment if a request for further information is needed in a specific situation in view of the potential systemic risks, and, second, to formulate such requests, if any, in a pragmatic and consistent manner.

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34 See Article 5 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter, the 'ESCB Statute').

35 See Article 127(5) together with Article 139(2)(c) of the Treaty and Article 3.3 together with Article 42.1 of the ESCB Statute.

36 See Article 3(2)(b) together with Article 3(1), first sentence of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

37 See Article 24(4) of the proposed regulation.

38 See proposed amendments 4 (recital) and 10 in the Annex to this opinion.

39 See proposed amendments 10 and 11 in the Annex to this opinion.

40 See Article 15(2) together with Article 36(2) of the regulations establishing the ESA, i.e. Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12); Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48); and Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

41 See Article 15(3) of Regulation (EU) No 1092/2010.

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 3 March 2011.

The President of the ECB

Jean-Claude TRICHET

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB[42]
Amendment 1 Recital 6 of the proposed regulation	
‘(6) Enhanced transparency relating to significant net short positions in specific financial instruments is likely to be of benefit to both the regulator and to market participants. For shares admitted to trading on a trading venue in the Union, a two-tier model should be introduced that provides for greater transparency of significant net short positions in shares at the appropriate level. At a lower threshold notification of a position should be made privately to the regulators concerned to enable them to monitor and, where necessary, investigate short selling that may create systemic risks or be abusive; at a higher threshold, positions should be publicly disclosed to the market in order to provide useful information to other market participants about significant individual short selling positions in shares.’	‘(6) Enhanced transparency relating to significant net short positions in specific financial instruments is likely to be of benefit to both the regulator and to market participants. For shares admitted to trading on a trading venue in the Union, a two-tier model should be introduced that provides for greater transparency of significant net short positions in shares at the appropriate level. At a lower threshold notification of a position should be made privately to the regulators concerned to enable them to monitor and, where necessary, investigate short selling that may create systemic risks or be abusive; at a higher threshold, positions should be publicly disclosed to the market**, through the use of an officially appointed mechanism,** in order to provide useful information to other market participants about significant individual short selling positions in shares.’
Explanation *Disclosure through an officially appointed mechanism best contributes to the timely consolidation of disclosed data on short selling. This amendment is linked to amendment 6, insofar as it amends Article 9(4) of the proposed regulation.*	

42 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Amendment 2 Recital 14a (new)	
[no text]	‘**14a The formats used for the purposes of reporting and public disclosure should allow for timely EU-wide consolidation and assessment of short selling positions affecting specific issuers. Consistency of reporting and disclosure standards is also crucial for ensuring an effective response to potential market disturbances.’**
Explanation *Consistency of reporting formats is crucial for ensuring an effective response to potential market disturbances by ESMA and the competent national authorities, as well as, in relation to their respective competences, by the ESCB and the ESRB. This amendment is linked to amendment 5, insofar as it amends Article 9(5) and (6) of the proposed regulation.*	
Amendment 3 Recital 15a of the proposed regulation (new)	
[No text.]	**‘15a. Real-time information sharing between competent authorities and ESMA regarding short positions may be necessary to ensure the effective performance of ESMA’s tasks. Moreover, information sharing between ESMA and ESCB central banks will facilitate performance of the central bank function of monitoring and assessing financial stability. Finally, information sharing between ESMA and the ESRB will facilitate performance by the ESRB of its task of identifying and prioritising systemic risks that may arise from developments within the financial system.**’
Explanation *This new recital refers to the necessary broader information sharing arrangements to be introduced by ESMA with ESCB central banks and the ESRB. This amendment is linked to Amendment 7.*	

Amendment 4 Recital 27 of the proposed regulation	
‘(27) Powers of intervention of competent authorities and ESMA to restrict short selling, credit default swaps and other transactions should only be temporary in nature and should only be exercised for such a period and to the extent necessary to deal with the specific threat.’	‘(27) Powers of intervention of competent authorities and ESMA to restrict short selling, credit default swaps and other transactions should only be temporary in nature and should only be exercised for such a period and to the extent necessary to deal with the specific threat. **Consultation of the ESRB by ESMA before the latter exercises its own powers of intervention or before giving its opinion on such measures to be applied by competent authorities will allow for an appropriate incorporation of the macro-prudential perspective in the contemplated interventions.**’
Explanation *This new recital refers to the necessary broader scope for consultation of the ESRB on the contemplated intervention measures initiated by ESMA or the competent authorities. This amendment is linked to amendments 10 and 11.*	
Amendment 5 Article 2(1)(i) of the proposed regulation	
‘(i) “issued sovereign debt” means: (i) in relation to a Member State, the total value of sovereign debt issued by the Member State or any ministry, department, central bank, agency or instrumentality of the Member State that has not been redeemed; (ii) in relation to the Union, the total value of sovereign debt issued by the Union that has not been redeemed;’	‘(i) “issued sovereign debt” means: (i) in relation to a Member State, the total value of sovereign debt issued **or guaranteed** by **the entities belonging to the public sector of** the Member State ~~or any ministry, department, central bank, agency or instrumentality of the Member State~~ that has not been redeemed; (ii) in relation to the Union, the total value of ~~sovereign~~ debt issued **or guaranteed** by **the entities belonging to the public sector of** the Union that has not been redeemed**,**

	where the 'public sector' shall be defined in accordance with Article 3 of Regulation (EC) 3603/93;'

Explanation

Sovereign debt instruments covered by the proposed regulation should be defined in a manner consistent with the existing Union secondary legislation, i.e. Regulation (EC) 3603/93. Such legislative technique will have the benefit of excluding any unintended gaps, while also ensuring that the debt instruments issued by the ESCB central banks as part of the implementation of the monetary policy are not classified as sovereign debt instruments, which would be contrary to the prohibition of the central bank financing of the public sector expressed in Article 123 of the Treaty.

Amendment 6

Article 9, paragraphs 4 to 6 of the proposed regulation

'4. The public disclosure of information set out in Article 7 shall be made in a manner ensuring fast access to information on a non-discriminatory basis. The information shall be made available to the officially appointed mechanism of the home Member State of the issuer of the shares referred to in Article 21(2) of Directive 2004/109/EC of the European Parliament and of the Council[20].	'4. The public disclosure of information set out in Article 7 shall be made in a manner ensuring fast access to information **delivered in standard data formats** on a non-discriminatory basis**,** ~~. The information shall be made available to~~ **through the use of** the officially appointed mechanism of the home Member State of the issuer of the shares referred to in Article 21(2) of Directive 2004/109/EC of the European Parliament and of the Council[20]. **All disclosed information shall also be publicly available by means of centralised access to officially appointed mechanisms established by ESMA.**
5. Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the information to be provided for the purposes of paragraph 1. The regulatory standards referred to in the first subparagraph shall be adopted in accordance with Articles [7 to 7d] of Regulation (EU) No …/….[ESMA Regulation]. ESMA shall submit drafts for those regulatory technical standards to the Commission by [31 December 2011] at the	5. Powers are delegated to the Commission to adopt regulatory technical standards specifying the details of the information to be provided for the purposes of paragraph 1. The regulatory standards referred to in the first subparagraph shall be adopted in accordance with Articles ~~[7~~**10** to ~~7d]~~**14** of Regulation (EU) No ~~…~~**1095/2010**~~….[ESMA Regulation]~~.

latest. 6. In order to ensure uniform conditions of application of paragraph 4 powers are conferred to the Commission to adopt implementing technical standards specifying the means by which information may be disclosed to the public. The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article [7e] of Regulation (EU) No …/….[ESMA Regulation]. ESMA shall submit drafts for those implementing technical standards to the Commission by [31 December 2011] at the latest. 20 OJ L 390, 31.12.2004, p. 38.’	**The Commission shall in particular take into account the need to allow for efficient EU-wide consolidation and assessment of short selling positions affecting specific issuers.** ESMA shall submit drafts for those regulatory technical standards to the Commission by [31 December 2011] at the latest. 6. In order to ensure uniform conditions of application of paragraph 4 powers are conferred to the Commission to adopt implementing technical standards specifying the means by which information may be disclosed to the public. **The Commission shall in particular take into account the need to allow for timely EU-wide consolidation and assessment of short selling positions affecting specific issuers.** The implementing technical standards referred to in the first subparagraph shall be adopted in accordance with Article ~~[7e]~~**15** of Regulation (EU) No ~~…~~**1095/2010**~~….[ESMA Regulation]~~. ESMA shall submit drafts for those implementing technical standards to the Commission by [31 December 2011] at the latest. 20 OJ L 390, 31.12.2004, p. 38.’
Explanation *Consistency of reporting and disclosure standards used will be crucial for ensuring an effective response to potential market disturbances by ESMA and the competent national authorities, as well as, in relation to their respective competences, by the members of the European System of Central Banks (ESCB) and the European Systemic Risk Board (ESRB). This amendment is linked to amendments 1 and 2 (recitals).*	
Amendment 7	

Article 11 of the proposed regulation	
‘*Article 11* ***Information to be provided to ESMA*** 1. Competent authorities shall provide information in summary form to ESMA on a quarterly basis on net short positions relating to shares or sovereign debt, and uncovered positions relating to credit default swaps, for which it is the relevant competent authority and receives notifications under Articles 5 to 8. 2. ESMA may request at any time, in order to carry out its duties under this Regulation, additional information from a relevant competent authority of a Member State about net short positions relating to shares or sovereign debt or uncovered positions relating to credit default swaps. The competent authority shall provide the requested information to ESMA at the latest within seven calendar days.’	‘*Article 11* ***Information to be provided to ESMA*** 1. Competent authorities shall provide information in summary form to ESMA on a quarterly basis on net short positions relating to shares or sovereign debt, and uncovered positions relating to credit default swaps, for which it is the relevant competent authority and receives notifications under Articles 5 to 8. 2. ESMA may request at any time, in order to carry out its duties under this Regulation, ~~additional information from~~ **that** a relevant competent authority of a Member State **shares with ESMA on a real-time basis the information it possesses** about net short positions relating to shares or sovereign debt or uncovered positions relating to credit default swaps. The competent authority shall ~~provide the requested information to~~ **comply with such requests by** ESMA~~ at the latest within seven calendar days~~. **3. ESMA may share the information which it has received in accordance with paragraphs 1 and 2 with the members of the ESCB and with the ESRB, if necessary in order to facilitate the performance of their respective tasks.** **4. By [31 December 2011]] ESMA shall submit to the Commission a report reviewing the possibility of establishing centralised Union collection mechanisms for the information reported under this**

	regulation, applying a common identifier of reporting entities and a minimum common taxonomy; such mechanisms should allow for flexible real-time access to information for policy purposes, while ensuring the confidentiality of the received data. Based on the outcome of such report, the Commission shall make appropriate proposals.'

<u>*Explanation*</u>

The modalities for information sharing between the competent authorities and ESMA should allow for real-time information sharing where this is necessary for ESMA to perform its tasks effectively. In the longer term ESMA should obtain automatic access to all information reported under the proposed regulation. In this respect, work on establishing centralised Union information collection mechanisms should be initiated. Such centralised mechanisms would help to overcome the limits inherent in the usage of uncoordinated micro-data pools and would also allow the information collected under the proposed regulation to be used in connection with other available datasets, minimising the administrative burden for the reporting entities and for the public authorities.

Moreover, information sharing between ESMA and ESCB central banks should be expressly provided for. This will facilitate performance of the central bank functions of collecting statistical data and monitoring and assessing financial stability. Information sharing between ESMA and the ESRB should also be provided for in order to facilitate performance by the ESRB of its task of identifying and prioritising systemic risks within the financial system. This amendment is linked to amendment 3 (recital).

Amendment 8

Article 15(12) of the proposed regulation (new)

[No text.]	'**12. In order to ensure uniform conditions of application of paragraph 1, powers are conferred on the Commission to adopt regulatory technical standards specifying: (a) detailed features of the market making activities benefiting from the exemption; (b) reporting procedures to disclose the market making activity to the competent authorities; and (c) portfolio structures and booking procedures to be used by market makers with a view to clearly identifying**

	the character of a transaction as either market making or another type of transaction, and excluding the rebooking of transactions without a notification to the competent authority. **The regulatory standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.** **ESMA shall submit drafts for those regulatory standards to the Commission by [31 December 2011] at the latest.**'
<u>*Explanation*</u> *Certain specified market making and primary market activities are exempted from the transparency and regulatory interventions regime envisaged under the proposed regulation. Potential abuses of this exemption should be avoided; in particular, the proprietary business of a market maker should not benefit from it. The Commission should adopt the relevant regulatory technical standards.*	
Amendment 9 Article 15(13) of the proposed regulation (new)	
[No text.]	'**13. In order to ensure uniform conditions of application of paragraph 4, powers are conferred on the Commission to adopt implementing technical standards ensuring uniform application of the exemption for the stabilisation schemes under the short selling regime. The Commission shall take into account, in particular, the need to ensure smooth functioning of market making activities, while preventing possible abuse of the market making exemption.** **The regulatory standards referred to in the first subparagraph shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.** **ESMA shall submit drafts for those regulatory standards to the Commission by**

	[31 December 2011] at the latest.'
Explanation *The exemption relating to stabilisation arrangements in the context of the short selling regime is defined by means of a reference to the definition used in the Union's regime for the prevention of market abuse. The Commission should adopt implementing technical standards specifically targeting the uniform application of this exemption under the short selling regime. Two separate sets of implementing technical standards (under the short selling and market abuse regimes) are preferable in order to address the specific features of the two situations; this is also a matter of proper legislative technique.*	
Amendment 10 Article 23(2a) of the proposed regulation (new)	
[No text.]	'**2a. Before deciding to impose or renew any measure referred to in paragraph 1, ESMA may consult with the ESRB. ESMA may set a deadline for responding to its consultation, which shall not be shorter than 12 hours.**'
Explanation *Consultation of the ESRB on intervention measures undertaken under the Union's short selling regime may allow for appropriate incorporation of the macro-prudential perspective in the contemplated interventions. Moreover, such consultation would allow the ESRB, first, to make an informed and timely assessment if a request for further information is needed in a specific situation in view of the potential systemic risks, and, second, to formulate any such requests in a pragmatic and consistent manner. This amendment is linked with amendment 4 (recital) and amendment 11.*	
Amendment 11 Article 24(4) of the proposed regulation	
'4. Before deciding to impose or renew any measure referred to in paragraph 1, ESMA shall consult, where appropriate, with the European Systemic Risk Board and other relevant authorities.'	'4. Before deciding to impose or renew any measure referred to in paragraph 1, ESMA shall consult, where appropriate, with the European Systemic Risk Board and other relevant authorities. **ESMA may set a deadline for responding to its consultation, which shall not be shorter than 24 hours.**'
Explanation	

Consultation of the ESRB on measures imposed in exceptional situations by ESMA may allow for appropriate incorporation of the macro-prudential perspective in the contemplated interventions. Moreover, such consultation would allow the ESRB, first, to make an informed and timely assessment if a request for further information is needed in a specific situation in view of the potential systemic risks, and, second, to formulate any such requests in a pragmatic and consistent manner. This amendment is linked with amendment 4 (recital) and amendment 10.