

## PRESS RELEASE

### **ESMA issues guidelines on market-making and primary dealer exemptions**

The European Securities and Markets Authority (ESMA) has published its final Guidelines and a Feedback Statement on the [Exemption for market making activities and primary market operations under the Short Selling Regulation](#). The Guidelines are aimed at providing market participants and national supervisors with clarity on the criteria to be met to benefit from a market making exemption, and the conditions to be used in assessing the notifications.

These Guidelines will support the creation of a level-playing field, consistency of market practices and convergence of supervisory practices amongst national securities market regulators across the EU.

Steven Majoor, ESMA Chair, said:

“Market-making is an important function in securities markets, these guidelines provide clarity to participants and supervisors on the operation of the exemptions under the Short Selling Regulation.

“This ensures that market participants can operate knowing that the same criteria are being applied in a consistent manner by authorities across the EU, thereby ensuring a level playing field for all.

### **Final Guidelines on Market-Making and Primary Dealers Exemption**

The key elements covered by the Guidelines include:

- In order to benefit from the market making exemption on a particular instrument, the market maker should be a member of a trading venue on which the relevant financial instrument is admitted to trading and conduct market making there;
- For any instrument for which a notification of intent to use the exemption is made, the market maker should fulfil some general principles. For equities and equity derivatives,

the Guidelines specify qualifying criteria to be considered by the authority which received the notification of intent in the assessment on whether to allow the use of the exemption or not;

- The process of notification of the intent to use the exemption and its content, including notification templates, the approach to processing notifications received by relevant competent authorities and the standards that competent authorities should take into account when assessing the notifications received;
- Definition of the relevant competent authority to be notified, in particular a single entry point for notifying entities from third countries; and
- Notifications made before entry into force of the Guidelines will be reviewed within 6 months after application of the Guidelines;

Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practices and ensure application by market participants. The authorities must notify ESMA whether they comply or intend to comply with the guidelines, explaining any reasons for non-compliance.

The Guidelines will be translated into all the official EU languages and will be applicable two months after the translations are published.

### **Feedback Statement**

The feedback statement addresses a number of issues raised by respondents to the Consultation Paper, with the key outcomes including:

- Confirmation that the assessment of the qualification conditions for market-making activities has to be done with respect to each individual financial instrument following legal advice received from the European Commission services;
- Confirmation that, therefore, the exemption cannot cover instruments that are not admitted to trading or traded on any trading venue;
- The exemption for approved primary dealers also covers CDS related to the sovereign debt issuer for which that dealer is exempted;
- Including anticipatory hedging in the market making activities definition under certain conditions;

- Providing flexibility to national authorities to decide whether or not to prohibit use of the exemption before the 30 days are over, which addresses issues around the 30 day notification period for IPOs and the inclusion of shares to stock exchange trading that are already traded on another trading venue;
- ESMA will publish on its website the lists of those entities who have been granted exemptions without further details on the financial instruments and markets, with this latter information being available to national authorities.

### Notes for editors

1. 2013-158 [Exemption for market making activities and primary market operations under the Short Selling Regulation](#).
2. ESMA published an updated [Q&A on the Implementation of the Regulation on short selling and certain aspects of credit default swaps](#) on 30 January 2013.
3. [Regulation on short selling and certain aspects of credit default swaps](#).
4. ESMA is an independent EU Authority that was established on 1 January 2011 and works closely with the other European Supervisory Authorities responsible for banking (EBA), and insurance and occupational pensions (EIOPA), and the European Systemic Risk Board (ESRB).
5. ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

Further information:

#### David Cliffe

Senior Communications Officer

Tel: +33 (0)1 58 36 43 24

Mob: +33 6 42 48 29 06

Email: [david.cliffe@esma.europa.eu](mailto:david.cliffe@esma.europa.eu)