CNMV ADVISORY COMMITTEE COMMENTS ON THE ESMA CONSULTATION PAPER ON THE "REVIEW OF CERTAIN ASPECTS PF THE SHORT SELLING REGULATION" (ESMA70-156-3914)

I. PURPOSE AND CONTENT OF THE CONSULTATION PAPER

The Spanish CNMV Advisory Committee welcomes the opportunity to comment on the ESMA Consultation Paper ESMA70-156-3914 "Review of certain aspects of the Short Selling Regulation", dated on the 21 September 2021, in the consultation open until 19 November 2021.

In the Consultation Paper, ESMA undertakes a review of the provisions of the Short Selling Regulation (SSR) after the experience gained from the measures adopted by the relevant competent authorities (RCA) during the COVID-19 crisis, consisting both of short and long term bans.

After having analyzed the impact of the measures adopted by the RCA, with the proposal ESMA aims at facilitating the operation of the SSR in any future emergency circumstances and also at the light of the episodes of high volatility which took place mainly in the US markets in respect of the so called "meme stocks", where large purchases of shares and call options combined with very high short positions created sharp price increases.

The Consultation Paper makes proposals in the following areas:

- Proposals related with the emergency measures (long and short-term bans), based on an empirical analysis of the impacts of the short selling bans adopted.

- Review of the rules for calculating the net short positions, the locate rule and the list of exempted shares.

- Review of the transparency and publication rules of net short positions, threshold, and proposal of ESMA having a central registry.

- Update the outdated current references to MiFID I.

The review at this stage is considered by ESMA of particular relevance, as per the evidence, brought by the COVID-19 crisis, that emergency situations require immediate responses. During the crisis, the long-term measures introduced by the different RCAs affected a large number of shares of all issuers listed on multiple venues while before usually affected one or a basket of instruments.

Please find below the contribution given by the CNMV Advisory Committee to the matters and questions raised within the Consultation Paper, following the order of the sections of the document.

II. PROPOSALS, QUESTIONS OF THE CONSULTATION PAPER AND ANSWERS

Section 3. Emergency measures adopted under SSR

Section 3.1 Long term bans: empirical analysis on the impact of the bans adopted after the COVID-19 outbreak

Main findings of the impact analysis of the long-term bans carried out by ESMA, are a liquidity deterioration, measured by bid-ask spreads and the Amihud illiquidity indicator, more pronounced for large cap stocks, highly fragmented stocks and for stocks with listed derivatives but lower degree of volatility and not significant effects on abnormal returns. Not even a sectorial effect nor a displacement effect of short selling bans from banning jurisdictions to non-banning ones or reversal of net short positions (NSPs) towards non-banned shares. ESMA concludes that a decrease in the total number of publicly disclosed NSPs can be observed both in countries with and without bans.

Main ESMA conclusions are that European long-term bans of 2020 had mixed effects, since they entailed a deterioration of market liquidity but also diminished the volatility of the concerned shares. ESMA supports that the restrictions on acquiring and increasing NSPs, together with their indicated impact on volatility can contribute to preventing that increasing NSPs exacerbate disorderly downward price spirals.

ESMA considers that the current framework supports RCAs capacity to address concerns on financial stability and shall remain available to RCAs in case of development impacting the resiliency of financial markets.

Q1: Does ESMA's analysis confirm the observation that you made in your perimeter of competency? Please provide data to support your views.

As indicated by ESMA, consistent with prior theoretical and empirical work, the short selling bans imposed during the crisis are associated with a liquidity deterioration. Specially for large-cap stocks, highly fragmented stocks and for stocks with listed derivatives. It is crucial to take into consideration this fundamental element of market quality as it shows that during the ban period, the instruments subject to it have been transacted at a higher cost and thus, have been less efficient precisely in times where liquidity is of the highest relevance to allow market participants to enter or exit the market in the best conditions. This is even more relevant when the short selling ban is not applied in all jurisdictions as it has been the case during the COVID-19 crisis for Germany and UK.

Short selling is today another element of the ecosystem of stock markets, that is complex, but widely recognized as one of the most efficient markets that exist, especially when the degree of liquidity is high. The existence of short selling and therefore bearish investors makes the markets more efficient, with greater and faster adjustment capacity. During the pandemic, markets have functioned normally, adequately absorbing liquidity

and making use of volatility management mechanisms, allowing the orderly functioning of the market.

According to the article “La normativa sobre ventas en corto y credit default swaps” by Jose Francisco Canalejas Merín, published in “*Revista del Derecho del Mercado de Valores*”n.º 25/2019, Nº 25, 1 de julio de 2019, any regulation on this matter must address the problem from an economic perspective, having in mind the important function that short selling plays in the price formation and adding that it is not used only in a purely speculative way, but used as well as a hedging strategy or risk management and as a legitimate mechanism by market makers.

It is as well mentioned that short selling can prevent stock prices from reflecting only the opinion of the most optimistic investors and prevent the creation of financial bubbles. Similarly, economic research and empirical studies suggest that short sellers can help uncover the price and convey beneficial information to market operators. In efficient markets, negative information should have an effect on prices and some studies suggest that the contribution of short selling to market efficiency is greater than that of investment analysts and could even prevent abrupt corrections in marketable securities price premiums.

After the short selling ban in Spain, the IBEX 35 index reached a spread of 25 basis points on March 13. During the months of March, April and May, in which the ban was in force, the index spread stood at 14.90; 10.20 and 8.46 basis points respectively. The average for the months of January and February stood at 5 basis points.

The measure does not only affect the cash markets but as well the derivatives markets, which are those that trade, precisely, products that allow to graduate the risk of investment portfolios. Only a portion of short positions reflect purely directional strategies (that prices will fall). More common is even hedging portfolios or positions in derivatives, for example, selling the components of an index against a position bought in the future. Or shorting to follow a strategy known as delta hedging on an options position.

In Spain, as a result of the ban on short selling between March 17 and May 17, 2020, the total volume traded in the MEFF derivative products market during the second quarter of 2020 decreased by 27.1%, compared to the same period in 2019.

Section 3.2 Long term bans: relevant competent authority

The determination of the RCAs is important to identify the scope of a national ban and if the consent from another RCA is required in the adoption process.

The current rule in SSR (article 2 (1) (j) (v)) refers to Delegated Regulation 1287/2006 for determining the RCA. Delegated Regulation 1287/2006 develops the obligations for transaction reporting foreseen in article 25.3 of MiFID I.

With MiFID II/MiFIR regime, that replaced MiFID one, the transaction reporting obligations are developed in RTS 22 (Delegated Regulation 2017/590).

According to it, the RCA for instruments other than sovereign debt, like shares, depositary receipts and derivatives, including index related derivatives, indicated within article 2 (1) (j) (v) of SSR, is the competent authority of the most relevant market in terms of liquidity for transaction reporting. RCAs are displayed in the FIRDS section of ESMA website.

Emergency measures in SSR confer RCAs with different powers to be deployed in exceptional circumstances. For instance, when an authority is not the RCA for a financial instrument which it wishes to include within the scope of the band, the consent from the RCA has to be obtained (art. 22 SSR).

ESMA notes that there may be different readings to determine the RCA: on a per-instrument basis, based on the definition of RCA in article 2 (1) (j) of SSR, where it would be necessary the consent from the RCA for each instrument included in the calculation of the NSP or a "share based approach", based on the objective of the ban, considering the share as the only target of the measure and being automatically included in the scope of the ban every instrument used in the calculation of the NSP.

ESMA supports the "share based approach", considering that the financial instruments referred to in articles 20 and 22 of SSR are the target of the ban.

The per instrument approach would be ineffective as there are uncertainties about the RCAs to whom address the request for consent, with a risk of omitting consents and having newly issued instruments not covered by a ban. The range of instruments that may create a NSP is wider than the identification of the RCA provided in the RCA definition as it may comprise instruments for which there is not a competent authority under the transaction reporting regime.

ESMA proposes to substitute the reference to Delegated Regulation 1287/2006 with a reference to RTS 22 and to clarify article 2 (1) (j) of SSR to specify the definition of RCA in the context of emergency measures, to expressly indicate that the RCA that is competent for the target financial instrument is also competent for all the instruments which confer a financial advantage in the event of a decrease in the price or value of the target instrument as the ban will then be effective for all the instruments used in the calculation of NSPs for the target instrument.

Q2: What are your views on the proposed clarifications?

The CNMV Advisory Committee supports and favours the proposed clarifications.

The substitution of the current references to the Delegated Regulation 1287/2006, that is no longer applicable as per the replacement of MiFID I rules on transaction reporting by the MiFID II/MiFIR ones, will bring clarity and certainty for the interpretation of the regime.

In addition, the express adoption of the "share based approach" will avoid interpretations that could make ineffective the measures adopted in case of emergency and contribute to the swift application of the SSR regime in a harmonized and simpler way.

Section 3.3 Long term bans: prohibitions under point a and b of article 20 (2)

ESMA considers that RCAs should have the possibility to be flexible and be able to modulate long term bans from a simple ban on short selling to a ban on entering into new or increasing existing NSPs.

ESMA proposes to clarify that RCAs may adopt either one or both of the measures contained in point a) and b) of article 20 (2) of the SSR.

Q3: Do you agree with the proposed clarification?

Yes, the CNMV Advisory Committee agrees with the proposed clarification.

Section 3.4 Long term bans: scope of the ESMA Opinion

According to article 27 of SSR, ESMA shall issue an opinion of the measure notified by a RCA within 24 hours, on whether it considers the measure or proposed measure is necessary to address the exceptional circumstances.

The opinion shall establish if ESMA considers that adverse events or developments which constitute a serious threat to financial stability or to market confidence in one or more Member states, have arisen, if the measure proposed is appropriate and proportionate to address such threat and if the proposed duration of the measure is justified.

ESMA highlights that the 24-hour deadline for the publication of ESMA´s opinion is challenging and recommends amending the SSR to state that ESMA´s assessment and the relevant Opinion will mainly rely on the factual events and representations outlined by the RCA in its notification and will consider further sources only when available and their assessment is compatible with the short deadline.

Even though there is not an express question included within the Consultation Paper with respect to this proposal, the ESMA proposal of clarification is somehow implicit in the text, given the short term for issuing an opinion, so the Advisory Committee considers that it does not seem necessary to include such clarification within the SSR.

Section 3.5 Long-term bans: scope of the measure in relation to indices, baskets of instruments and ETFs

Those instruments are included in the scope of long-term bans under article 20 of the SSR in the paragraph (b) of Article 20 (2) that refers to the financial advantage conferred in the event of a decrease in price or value of the associated financial instrument.

As those instruments may be used for hedging market-wide risk they would less likely be used to take a NSP in a single share.

In addition, following the share-based approach in the determination of the RCA for the shares included in the indices, baskets and ETFs, more than one ban may apply to the same instrument at the same time.

ESMA considers either to exclude indices, baskets and ETFs from the scope of the long-term bans or, alternatively, to introduce a percentage-based weighting approach where they would be excluded only when the banned instruments do not exceed a percentage of the overall components.

Without prejudice to the exclusion, ESMA is considering if it is worth clarifying that should be always prohibited any trading in indices, baskets and ETFs that clearly demonstrates is intending to circumvent the ban.

Q4: What are your views regarding the exclusion or, alternatively, a percentage–based weighting approach, for indices, baskets and ETFs in the context of long – term bans?

Taking into account the answer to question 1, the concern about the impact of the short selling ban on liquidity and the process of price formation can be extended to indices, baskets and ETFs.

The type, number and liquidity of the instruments affected by the short selling ban at a given time should also be taken into account to assess the impact of extending the measure to different types of indices, baskets and ETFs according to their global or sectorial nature, their assets under management (as a measure of their size) and their own liquidity.

Taking into account the above aspects and to the extent that short positions in indices, baskets and ETFs may imply a circumvention of the measures taken in their respective underlying basket, a percentage-based weighting approach should be established to limit this effect. This measure will as well objectivize and clarify that, in any case, the use of the indices, baskets and ETF´s would not make possible the circumvention of the ban.

Situations in which indices, baskets and ETFs are exempted from the short selling ban should therefore be limited by taking into account the percentage of instruments part of their portfolio that are subject to prohibition, allowing the normal functioning of their subscription and redemption mechanisms and limiting speculative directional short selling strategies.

Section 3.6 Review of the conditions for RCAs to adopt emergency measures and ESMA intervention powers under Article 28 SSR

The conditions foreseen in article 28 of SSR for the intervention of ESMA, about the presence of cross border effects, the absence of an adequate measure at national level and of a regulatory arbitrage, seem coherent with the role of ESMA in the European supervisory landscape. But there are other differences in the wording of the conditions to be considered by RCAs and ESMA that do not seem to be justified in relation to the measures, whose scope is overlapping in substance.

Article 24 of the Delegated Regulation 918/2012, specifies the cases of adverse events or developments for RCAs to adopt restrictive measures under articles 18-21 of SSR and what should be considered as a threat to the orderly functioning and integrity of financial markets. Many of the provisions of this article, refer to financial institutions, market infrastructures and clearing and settlement systems with no reference to other type of issuers that may raise supervisory concerns in case of sharp price decline or NSPs.

ESMA also notes that, scenarios as the recent outbreak of the COVID-19 pandemic and the disruptions caused by the governments to tackle the consequences of the pandemic, are not explicitly mentioned within the adverse events.

ESMA proposes to align the wording of the conditions for ESMA to activate its intervention powers under article 28 of the SSR with the ones for RCAs.

Q5: Do you agree with the proposed alignment of the conditions to adopt measures under Article 20 and Article 28 of SSR?

Yes, the CNMV Advisory Committee agrees on the proposed alignment of the conditions.

In paragraph 145 of the Consultation Paper, ESMA proposes to:

a) Delete the conditions set forth in article 24 (3) of Delegated Regulation 918/2012 in relation to ESMA powers under article 28 of the SSR, and apply the list of events in article 24 (1), currently relating to RCAs powers) to ESMA powers under article 28 of the SSR.

b) Amend the list of adverse events and developments contained in article 24 (3) of Delegated Regulation 918/2012 to include additional types in relation to issuers other than financial institutions, marker infrastructures operators and clearing and settlements systems and new typologies of adverse events such as pandemic that either for its direct implications or as a result of the measures adopted by the governments, may involve unusual volatility and downward spirals in financial instruments.

Q6: Do you agree with the proposed amendments to Article 24 of Delegated Regulation 918/2012?

The CNMV Advisory Committee agrees on the deletion of article 24 (3) and the application to ESMA of the same conditions of article 24 (1) applicable to the RCAs as it does not seem justified having separate provisions and it will simplify its wording, interpretation, and application.

Taking into account the answer to question 1 on how the short selling ban affects market quality, the proposed amendment to include additional types of adverse events or developments in relation to issuers should be sufficiently narrowed down and put into context in order not to have an effect contrary to that desired.

In relation to issuers, further clarity on the scope pursued by ESMA would be welcomed.

The inclusion of new typologies of adverse events makes sense as it reflects the recent experience as long as it is sufficiently narrowed so that it does not affect the orderly functioning of markets.

Section 3.7 Short term bans: procedure for issuing short term bans and ESMA mediation powers

ESMA reiterates its 2017 Technical Advice, that recommends to amend the procedure to issue short term bans that encompass different aspects of the current procedure including:

- That only the RCA of the most relevant market in terms of liquidity for the instrument can adopt a short term ban effective in all Member states.

- The RCA should inform ESMA and all others RCAs of its intention and then liaise with ESMA to ensure coordinated publication.

- Other RCAs should not have any power to oppose the short-term measure.

- The ban should be effective in all Member states upon publication on the website of ESMA.

- Change the scope from a ban on short selling to a ban on entering into or increasing NSPs and limited to shares and sovereign debt instruments.

Alternatively, ESMA suggests that the mediation procedure should be made compatible with the ESMA new general mediation procedures.

Q7: Do you agree with the proposed amendments to the SSR and, more specifically, the mediation procedure under Article 23 of SSR?

The current scope of article 23 tackles a dramatic fall of price in a specific trading venue and it is to be adopted by the RCA of the trading venue and with sole effect in that trading venue. The restriction is, at present, limited to the market affected by the price fall of the corresponding RCA.

ESMA proposals aims to extend the scope of the short-term ban of article 23 to all Member states, limiting the capacity of other RCAs to oppose the measure. The CNMV Advisory Committee agrees with the proposed amendment as it considers that the measure adopted should be effective in all Europe.

In that case, the mediation procedure would be not applicable.

Section 4. Review of SSR regarding the requirements for the calculation of NSPs, the “locate” rule and the list of exempted shares

Section 4.1 Calculation of NSPs in shares: subscription rights

Instruments that relate to unissued capital, like subscription rights, are not included in the calculation of NSPs as they give a claim to shares that are not issued yet while article

3 of the SSR mentions instruments referring to the “issued share capital” for the purposes of the calculation of NSPs.

ESMA raises again the possibility to amend the SSR to allow for the inclusion of the subscription rights in the calculation of the NSP by a change of the text of article 3 (4) together with an amendment to article 7 (b) of the Delegated Regulation 918/2012.

Q8: What are your views on ESMA’s proposal to include subscription rights in the calculation of NSPs in shares?

The Advisory Committee is in favour of including subscription rights in the calculation of NSPs in shares but taking into account that these are short-life instruments and present specific profiles in comparison to other instruments (i.e, it may be difficult to locate and loan.)

The economic effect of the subscription rights is the same as to call options which are included in the calculation.

Section 4.2 Rules against uncovered short sales in shares

A key requirement of the SSR is that all short sales of shares must be covered. Short sellers should enter into different types of arrangements before entering into a short selling transaction to ensure that they have the securities available at settlement time.

ESMA believes that a review of the rules for locate arrangements could help in reducing the risk of “short squeezes” in the EEA in the future.

The conditions of article 12 (1) of the SSR have to be fulfilled. The location arrangements are developed by article 6 of Delegated Regulation 827/2012 that identifies three categories of locate arrangements:

- Standard locate arrangements and measures.
- Standard same day locate arrangements and measures.
- Easy to borrow or purchase arrangements.

ESMA is considering some potential amendments to the EU rule against “naked” short selling: reinforcing the commitment of third parties providing certain locate arrangements, imposing a record-keeping requirement for locate arrangements at level 1 and improving the sanction regime applicable to infringements of the locate rule.

Section 4.2.3 Weakness of the third party´s commitment under Article 12 (1) (c) SSR

ESMA notes that the language used in Article 12 (1) (a) and (b) of the SSR differs from the one used in (c): in the first two cases the SSR refers to legally enforceable claims while letter (c) only refers to “have a reasonable expectation that the settlement can be effected when it is due”.

A concern is that third parties can distribute “easy to borrow or purchase lists” as if they were “easy to borrow or purchase confirmations” to several short sellers without taking

into account the overall amount to be delivered. This could eventually lead to drought in the relevant shares on the relevant date, creating the conditions for a “short squeeze”.

Also notes that the locate confirmations are dependent on the market conditions prevailing at the time they were provided so a third party could argue that the market conditions have changed before the settlement date.

ESMA view is that the language used in Article 12 (1) (c) should be revised as well as article 6 of Implementing Regulation (EU) 827/2012, in order to make clear that the confirmations must contain a commitment to make the shares available for settlement in due time, taking into account the amount of the possible sale and indicating the period for which the share is located, irrespective of the market conditions.

The ESMA proposal is that article 6 should refer to a unique type of locate arrangement which would include:

- A locate confirmation, prior to the short sale, by the third party that firmly commits to make the shares available for settlement taking into account the amount of the sale and indicating the period for which the shares are located.

- Instructions in the event of failure to cover: an undertaking that if not covered in the settlement day, the person will promptly send an instruction to the third party to procure the shares to cover the short sale to ensure settlement in due time.

Q9: Do you agree with this proposal to reinforce the third-party’s commitment? If not, please elaborate.

Yes, it seems that if no measures to reinforce the wording and to establish a firm commitment are taken, it could eventually lead to a loss of control of the short positions that might bring uncertainty in case of sudden and extreme change of the market conditions.

The Advisory Committee estimates that the locate should permit a generic commitment that identifies, stock by stock, its availability at the end of the sale trade date, as it happens in some EU markets.

It is of utmost importance, that the rules are harmonized all over the EU in order to give the guarantee of the the level playing field among intermediaries.

If yes, would you either (A) keep the three types of locate arrangements, but increase the level of commitment of the third party to a firm commitment for all types of arrangements, or (B) simplify the regime to keep only one type of firm locate arrangement?

A, keep the three types of locate arrangements as it may probably give more flexibility to the industry and their current set-ups and processes but increasing the level of commitment of the third party for all types of arrangements.

Section 4.2.4 Absence of a Level 1 record keeping obligation in relation to "locate" arrangements

ESMA considers that the lack of a requirement at level 1 to record and store the documentation regarding the requirements set out in Article 12 of the SSR, may undermine the capacity of RCAs to monitor its fulfilment and proposes that Article 12 of the SSR should include the obligation of natural and legal persons entering a short sale to keep the records and arrangements for five years.

Q10: Do you agree with this introducing a five-year-long record-keeping obligation for locate arrangements? If not, please justify your answer.

It seems that the proposed record-keeping obligation would be imposed to the natural or legal person than incur in short selling and not to the third party of the locate arrangement which is a financial entity and has issued a confirmation in a durable medium according with Article 6 (5) of the Implementation Regulation 827/2012.

It is not clear whether it is necessary and convenient to impose the existence of a record-keeping obligation of five years as it would bring costs and complexity to the existing set-up.

Section 4.2.5 Lack of harmonised sanctions for "naked short selling"

Q11: Do you agree with reinforcing and harmonising sanctions for "naked short selling" along the proposed lines? If not, please justify your answer.

ESMA gives details about the diversity of the sanctions that can be imposed to natural and legal persons as well as a big dispersion between the average and the median sanctions and supports to harmonise them in a way that would exceed what can be achieved by the guidelines foreseen in Article 41 of the SSR concerning the penalties and administrative measures in order to have a deterrent effect across the EU and be more aligned and effective.

ESMA proposed to establish a minimum amount that must be imposed under the maximum administrative pecuniary sanctions in the case of infringement of Article 12 (1).

The Advisory Committee considers that is necessary to harmonize the sanctions in order to foster their deterrent effect and similar application across the EU.

Section 4.3 List of exempted shares

ESMA considers that the reduction of the scope of the list of exempted shares should be limited and based on a minimum threshold that could not fall below 40% of the turnover within the EU.

ESMA is considering whether RCAs should have the capacity to maintain within the scope of the SSR obligations, shares for which a significant percentage of trading takes place within the EU. For, ESMA, a "significant percentage of trading" could imply that the share in question has no less than 40% of its turnover traded in the EU.

Q12: Do you consider that shares with only 40% of their turnover traded in a EU trading venue should remain subject to the full set of SSR obligations?

In the opinion of the Advisory Committee, the application of these measures related to the impact on the real economy that the trading of a share in several jurisdictions could entail, should be addressed through cooperation between the NCAs of those jurisdictions in order to avoid duplication in the application of measures and possible extraterritoriality. More relevant to assess the possible impact on real economy should be the relative importance of the volume traded for the aforementioned share in the markets involved as a whole in order to adequately measure the risk that it could entail.

It should also be taken into account that the trading of a security on a particular trading venue might not have been requested by the issuer, so that the application of those measures could have an impact on the evolution of the company without the company being aware of that possibility.

13: Do you consider that NCAs should take any other qualitative but specific parameter into account in the identification of the list of shares that should not be exempted from the SSR obligations despite being more heavily traded in a third-country venue? If yes, please elaborate

The SSR should apply to those shares that have its primary listing within the EU

Section 5. Transparency of net short positions

Section 5.1 Article 6 (2) SSR Publication Threshold

ESMA consulted in 2017 whether the threshold for public disclosure was adequate and analysed the market impact of public disclosure of NSPs in shares. The Final Report found that public disclosure influences the behaviour of market participants with short positions below the 0.5% disclosure threshold as some of them refrain from crossing the 0.5% threshold to avoid publicly disclosing their NSP in a share. Only 10 respondents provided responses and supported maintaining the threshold at 0.5%

ESMA preliminary view is that the current publication threshold still provides a good compromise between transparency to the market and market efficiency.

Q14: Would you modify the threshold for the public disclosure of significant NSPs in shares? If yes, at which level would you set it out? Please justify your answer, if possible, with quantitative data.

No. As per the information gathered by ESMA about the meme episode and the USA trends and in order to avoid giving additional information of the overall market that may be used to attack the concerned stocks, the Advisory Committee supports keeping the current levels of transparency.

Section 5.2 Publication of aggregated net short positions on shares

The SSR does not foresee the compulsory publication by RCAs of the aggregated NSPs per issuer on a regular basis, based on the public and non-public notifications received.

ESMA analysed the possibility of publishing anonymised aggregated NSPs per issuer on a regular basis in 2017 and concluded that RCAs should be able to periodically publish anonymised aggregated NSPs per issuer on a voluntary basis. There are reasons for which RCAs may decide not to publish aggregated NSPs as may be compared with the individual NSPs above 0.5% and lead market participants to reach conclusions about the short selling pressure or comparing the aggregated information with the individual one.

ESMA´s preliminary view is that the current SSR transparency regime could be complemented by the compulsory publication of aggregated NSPs per issuer integrating all individual positions reaching or exceeding the notification and the publication thresholds at least every two weeks.

Q15: Would you agree with the publication of anonymised aggregated NSPs by issuer on a regular basis? If yes, which would be the adequate periodicity for that publication?

Yes. The CNMV Advisory Committee considers relevant that this information be provided with the highest possible frequency. A bi-weekly basis would be considered adequate.

Q16: Have you detected problems in the identification of the issued share capital to fulfil the SSR notification/publication obligations? If yes, please describe and indicate how would you solve those issues.

No. With the available information it does not seem that there are problems in the identification of the issued share capital to fulfil the SSR notification/publication obligations.

Section 5.3 Centralised notification and publication system

In 2017, ESMA publicly consulted on the possibility to build an EU centralised notification and publication system in the context of the SSR, that would lead to a more harmonised reporting mechanism and allow investors reporting to different RCAs to reduce their administrative burden, through a unique process of registration.

ESMA proposes to implement an EU-wide notification and publication system through which natural or legal persons could register and notify their NSPs once they cross the relevant thresholds. RCAs would be relieved from the obligation to provide information on a quarterly basis to ESMA in accordance with Article 11 of SSR.

The system would ensure that RCAs can access on a real-time basis the information on both the registrations and the notified NSPs of their competence, as they currently do via their national notification systems.

Q17: Do you agree with the establishment of a centralised notification and publication system for natural and legal persons to communicate their NSPs? In your view, which would be the benefits or shortcomings this system would bring? Please explain.

Yes. It seems to be an adequate measure that would contribute to foster transparency that reinforces the measures applied by the NCAs.

It is important to remark that it should be arranged in order to fully preserve the key role developed by NCAs in the development of their supervisory duties.