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| Response Form to the Consultation Paper on the review of certain aspects of the Short Selling Regulation |
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**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **19 November 2021.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_SSRR\_1>. **Your response to each question has to be framed by the two tags corresponding to the question.**
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_SSRR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_SSRR\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open Consultations” -> Consultation Paper on Review of MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

# All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to issuers of financial instruments admitted to trading or traded on a trading venue, investment firms, market makers, primary dealers, persons who engage in short sales or transactions resulting in net short positions. Responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics.

**General information about respondent**

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| Name of the company / organisation | AMAFI |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | France |

Please make your introductory comments below, if any.

<ESMA\_QUESTION\_SSRR\_0>

**Association française des marchés financiers** **(AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI’s members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities.

AMAFI welcomes the opportunity to respond to this consultation paper (hereafter the CP) on the review of certain aspects of the Short Selling Regulation (SSR).

Before answering the specific questions raised in the CP, AMAFI would like to highlight the following comment

# Comment

As it is stated in the CP (Introduction para 7), in December 2017 ESMA delivered a technical advice which notably focussed on the market making exemption but “at this point in time no measures have been taken yet in response to the ESMA Technical Advice”.

AMAFI fully supports the content of the technical advice and encourages ESMA to contact the European Commission to see what follow-up could be given to this technical advice.

<ESMA\_QUESTION\_SSRR\_0>

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

<ESMA\_QUESTION\_SSRR\_1>

AMAFI is not in a position to answer this question.

<ESMA\_QUESTION\_SSRR\_1>

1. What are your views on the proposed clarifications?

<ESMA\_QUESTION\_SSRR\_2>

AMAFI agrees with ESMA analysis and ESMA proposals which will bring more legal certainties and will facilitate the taking of emergency measures.

Nevertheless, this change should not be linked to the question of the potential exclusions or limitations in relation to indices, baskets of instruments and ETFs. See our answer to question 4

In addition, the market making exemption for both the “target instrument” and “those instruments which confer a financial advantage in the event of a decrease in the price or value of the ‘target’ instrument” should not be affected.

<ESMA\_QUESTION\_SSRR\_2>

1. Do you agree with the proposed clarification?

<ESMA\_QUESTION\_SSRR\_3>

AMAFI agrees with ESMA proposal.

<ESMA\_QUESTION\_SSRR\_3>

1. 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?

<ESMA\_QUESTION\_SSRR\_4>

AMAFI fully supports the exclusion the exclusion of indices, baskets and ETFs from the scope of long-term bans. As it is stated in the CP, “there is an argument that those instruments would less likely be used by market participants to take an NSP in a single share” and “historically RCAs have often limited or excluded those instruments from the scope of the bans that were adopted since the application of the SSR.”

AMAFI also considers that the introduction of a percentage–based weighting approach, would be very complicated to implement and would raise various issues (non-compatible with ESMA proposal in section 3.2, identification of which instruments are below or above the thresholds, hedging strategies would affected…)

Such approach could not be envisaged without other several measures: ESMA's maintenance of a list of relevant financial instruments; a market making exemption by default, exemption from the scope of the ban of certain market activities such as the rolling of derivatives positions.. .

AMAFI fully agrees with ESMA consideration that “any trading in indices, baskets and ETFs, in a manner that clearly demonstrates that it is intending to circumvent the ban, should be prohibited at all times”.

<ESMA\_QUESTION\_SSRR\_4>

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

<ESMA\_QUESTION\_SSRR\_5>

AMAFI agrees with this proposal.

<ESMA\_QUESTION\_SSRR\_5>

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

<ESMA\_QUESTION\_SSRR\_6>

AMAFI tends to agree with ESMA but considers that mentioning only pandemic or widespread epidemic is two limited since we do not know yet the nature of the next important crisis. The definition of adverse events should not be limited to a pre-definition of events.

Therefore, AMAFI suggests the following wording:

b. ~~new typologies of~~ adverse events such as pandemic or widespread epidemic or **any event that has similar effects**, that either for their direct implications or as a result of the measures adopted by the governments to contain them may involve unusual volatility and downward spirals in financial instruments

<ESMA\_QUESTION\_SSRR\_6>

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

<ESMA\_QUESTION\_SSRR\_7>

AMAFI agrees with this proposal.

<ESMA\_QUESTION\_SSRR\_7>

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

<ESMA\_QUESTION\_SSRR\_8>

AMAFI agrees with this proposal.

<ESMA\_QUESTION\_SSRR\_8>

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

<ESMA\_QUESTION\_SSRR\_9>

AMAFI strongly disagrees with the proposal to reinforce third party’s commitment.

Indeed, from the discussion in the CP, this approach does not seem to be based on any compelling evidence of major problems in terms of the operation of the existing locate standards. No “short squeeze nor increase int the settlement fails has been observed int the EU. Moreover, the fail rate in the EU is very low and the implementation of the penalty regime of CSDR in February 2022 will improve this rate.

In contrast, it would restrain market short selling activities at the expense of market liquidity and the quality of the price formation process.

<ESMA\_QUESTION\_SSRR\_9>

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

<ESMA\_QUESTION\_SSRR\_10>

AMAFI agrees with this proposal.

<ESMA\_QUESTION\_SSRR\_10>

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

<ESMA\_QUESTION\_SSRR\_11>

AMAFI is not opposed to a harmonization of sanctions but that, in any cases, sanctions must be taken on a case-by-case basis.

<ESMA\_QUESTION\_SSRR\_11>

1. 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?

<ESMA\_QUESTION\_SSRR\_12>

It is not possible to agree with this proposal since we do not have any information on the list of shares that would be captured by this threshold. It would bring a lot of uncertainties in the scope of SSR.

<ESMA\_QUESTION\_SSRR\_12>

1. Do you consider that NCAs should take any other qualitative but specific parameter into account in the identification of the shares subject to the full set of SSR obligations even if they are more heavily traded in a third-country venue? If yes, please elaborate

<ESMA\_QUESTION\_SSRR\_13>

AMAFI does not agree with this proposal which would end up with more complexity and more uncertainties.

<ESMA\_QUESTION\_SSRR\_13>

1. 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.

<ESMA\_QUESTION\_SSRR\_14>

ESMA recognized that; “the current publication threshold still provides a good compromise between transparency to the market and market efficiency”. A diminution of the threshold would restrain market short selling activities at the expense of market liquidity and the quality of the price formation process.

<ESMA\_QUESTION\_SSRR\_14>

1. 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?

<ESMA\_QUESTION\_SSRR\_15>

AMAFI agrees and suggests that ESMA should be in charge of such a publication. At the beginning, a weekly or bi-weekly publication could be envisaged.

<ESMA\_QUESTION\_SSRR\_15>

1. 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.

<ESMA\_QUESTION\_SSRR\_16>

AMAFI has no information on this topic

<ESMA\_QUESTION\_SSRR\_16>

1. 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.

<ESMA\_QUESTION\_SSRR\_17>

AMAFI is in favor of a centralized notification and publication system which would reduce the administrative costs for market participants and would help the publication of anonymized aggregated NSPs by issuer.

<ESMA\_QUESTION\_SSRR\_17>