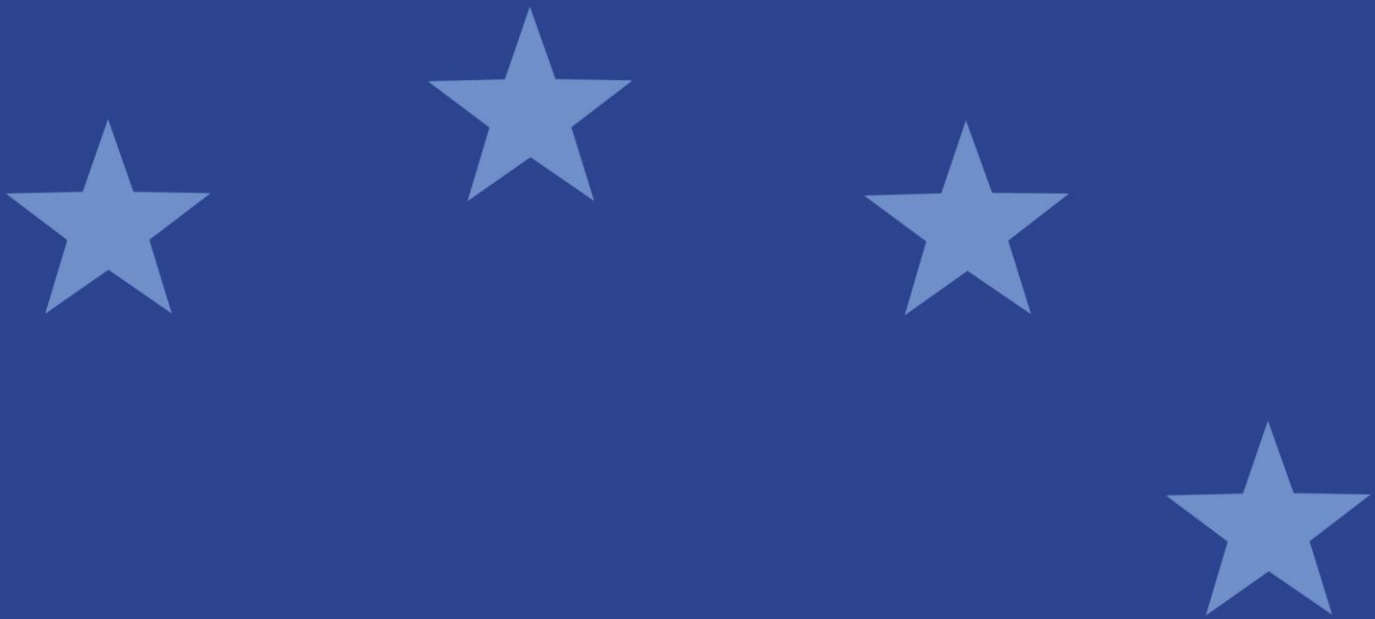




European Securities and
Markets Authority

Response Form to the Consultation Paper on the review of certain aspects of the Short Selling Regulation





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 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 under the heading 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

Name of the company / organisation	Deutsche Börse Group
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Please make your introductory comments below, if any.

<ESMA_QUESTION_SSRR_0>

Deutsche Börse Group (DBG) welcomes the opportunity to contribute to ESMA’s consultation on the review of certain aspects of the Short Selling Regulation. We hope that our observations and comments from an infrastructure provider’s perspective are considered helpful in establishing a comprehensive assessment of the existing regime and in deriving potential recommendations for targeted amendments to it.

We clearly support ESMA’s efforts in observing the market developments in 2020 and analysing the effectiveness of regulatory interventions under the SSR regime. By and large, we observed that the regime with its well-conceived allocation of resources and competencies had proved efficient even under these extreme market circumstances in March/April 2020. Before providing some of our own findings and observations we see value in underlining that the short selling regime had been designed and implemented in a way that mandates relevant competent authorities to decide which measures to take – or to not take any measures. Importantly, these different approaches by competent authorities provide valuable insights into the effectiveness of the regime and the implications of supervisory intervention. We therefore agree that any amendments to the existing regime shall consider lessons learnt from the operational handling of the various measures within the given toolkit as well as a thorough analysis of the impact of the measures taken on the efficient functioning of markets and the preservation/restitution of orderly trading conditions. Importantly, various measures within the regime should include a currently existing exemption under Article 17 for market makers, who are the main liquidity providers on the market and thus, are essential, especially during crisis and highly volatile times.

While last year’s developments surely provide valuable insights into how the regime works, authorities and policymakers should also be mindful that any conclusions on the need for potential amendments shall be based on a long-enough timeline with a sufficient number of observation points as well as findings and insights derived from academic research and practitioners’ views.

It is important to note that the regime is an essential but not isolated part of the overall safety architecture of markets, and hence its effectiveness and appropriateness shall be seen in conjunction with other elements of this architecture. Short-selling bans are one element in a larger toolkit for competent authorities to ensure orderly trading conditions and avoid risks to market stability and integrity; they add to trading venues’ mandatory arrangements designed, applied and constantly amended to prevent disorderly price changes of a financial instrument. Exchanges have various arrangements in place to prevent those which were used extensively during the market turmoil 2020 but proved their effectiveness to contain the increased volatility and to maintain and restore market confidence. The probability that the issue of extraordinary

price change can be handled locally is higher with the use of all those available measures. This holds in particular against the background that price imbalances might in many cases have a “local” character and therefore, the assessment of whether the “local” price change had an influence on other related instruments and markets or have some more global effect should be done carefully by the relevant “local” authorities.

Existing safety measures to protect the integrity of the price discovery process such as volatility interruptions effectively fulfil the regulatory purpose of the SSR – which is to prevent prices from declining in a disorderly fashion. Imposing a ban on short-selling activities faces the challenge of determining a causal relationship between price declines and short selling activities and hence to state a clear and unambiguous justification for regulatory intervention. Furthermore, the mandatory safety mechanisms serve as efficient lines of defence to ensure orderly trading conditions and to protect the price discovery process in line with the respective MiFID II mandates and requirements. Importantly, ESMA’s own analysis on circuit breakers’ performance during 2020 had confirmed the effectiveness of these safety measures and had not identified any need for amendments (ESMA Risk Dashboard, June 2021; ESMA Report on Trends, Risks and Vulnerabilities No. 2/2021).

We consider this notion of a tightly integrated and well-functioning safety architecture with shared but also separate responsibilities and mandates as a necessary prerequisite to contextualize the empirical findings mentioned in ESMA’s analysis and to assess the necessity of adaptations to the current regime, in particular to those components which address market-wide price dislocations and potentially systemic implications.

The following sections will short summarize our main observations and arguments. Please refer to the respective responses for a more detailed reasoning.

Our own empirical findings strongly suggest that in times of massive market movements during March and May 2020 liquidity consolidates at the place of price determination and seeks reliability. Importantly, we did not observe the intended effects of the ban on the development of prices and volatility in the basket of shares upon which short-selling prohibitions were imposed. While market downturn and recovery occurred simultaneously for all markets analyzed, these ban-markets on average declined more and recovered less. Furthermore, markets operating under a short-selling ban underperformed across different measures of market quality – liquidity, volatility, turnover – compared to an index without a ban (DAX).

This evidence confirms to our understanding vast parts of the academic literature on the detrimental impact of imposing bans on covered short selling positions. The WFE’s review of the academic literature has compiled empirical evidence which almost unanimously points towards short-selling bans being disruptive for the effective functioning of markets, as they are found to reduce liquidity, increase price inefficiency and hamper price discovery. This evidence suggests, contrary to regulatory objectives, that banning short selling during periods of heightened uncertainty exacerbates market volatility. We also ask ESMA to take into consideration not to undermine global investors’ confidence into the efficiency of EU financial markets, in particular against the background that other leading financial market jurisdictions do not impose prohibitions on covered short sales.

Short selling is a critical underpinning of efficient price discovery and liquidity provision. Moreover, a great many investment and risk management strategies rely on the ability to take

'long' and 'short' positions. These benefit a wide range of ordinary investors including pension funds and local governments. The loss of these benefits would need to be carefully balanced before determining that any intervention to prevent short selling was appropriate. Therefore, concentrating the power to issue a long-term ban with one RCA also for financial instruments which are not even traded within the jurisdiction of this RCA does not seem to be an appropriate allocation of competences between national authorities given the significant impacts a long term ban will have on local markets.

While it is important to effectively address events and developments constituting a threat to financial stability and market confidence in a harmonized way given the close inter-linkage between some EU-markets, it is also necessary to involve national competent authorities of affected markets in case of long term measures to ensure that the proportionality principle is applied appropriately. The decision whether a long term emergency measure is necessary to address the threat and whether the detrimental effects are not disproportionate to the benefits should be based on all relevant expertise which requires to involve the national authorities where the financial instrument is admitted to trading in order to ensure that their expertise is brought into the decision making process.

We therefore disagree with the proposed changes to Article 20 and Article 28 SSR. Clear responsibilities, rules for decision-making and procedures that allow for efficient processes to handle situations of especially, market stress, are of importance. However, we consider that some discretion by RCAs should remain in order to avoid redundancies and organizational overhead, therefore, ESMA needs to focus on ensuring that legislation is implemented as intended by the legislator.

Further, we question that the list of adverse events and developments in Article 24(1) of Delegated Regulation 918/2012 should be amended. Currently, the list consists of the triggers related to financial markets, e.g. crisis, bankruptcy etc. Pandemic or epidemic is a widespread occurrence of a disease that based on previous years' experience most likely would have an economic and financial effect. However, ESMA and RCAs should focus on the financial markets and on the events on those financial markets and not global catastrophes.

While we take note that ESMA's analysis and considerations regarding uncovered short selling are solely focused on shares and hence do not take into account potential amendments of the regime for other financial instruments, we would also see value in raising ESMA's attention to uncovered short selling activities in sovereign bonds. Article 13 is exempting participants that hedge economic exposure to a bond that is correlated to such government bond. A CCP's default management is hedging economic exposure to the very same bond it is selling. Article 17 is exempting market making activities. Proper default management execution is key to functioning repo markets and efficiency of the financial system. That is why we request adding the CCP to the exemptions for default management purposes.

DBG is of the opinion that a comprehensive database may be a good tool to enable supervisory authorities to properly monitor and analyze market developments with a view to protect market participants, to prevent unlawful behaviors and to ultimately ensure stability. Before concluding on the necessity and design choices of such supervisory database, we encourage ESMA and RCAs to reflect on the prerequisites that shall be met to provide a meaningful contribution for supervisory practices across the EU.

Importantly, we call to integrate a potential centralized database into the existing balanced allocation of legal responsibilities and mandates among authorities for deciding on supervisory measures into short selling. Furthermore, we see value in re-assessing the operational and functional challenges that come with an aggregation of data from different sources. Finally, given that supervisory data sets entail sensitive data which are compiled and reported for clearly determined and legally mandated supervisory purposes only, a potentially undefined re-use of supervisory data by other stakeholders would be questionable. Any data sharing that would facilitate the re-use of data for other purposes than those originally mandated shall be weighed against the principles of data protection and confidentiality.

<ESMA_QUESTION_SSRR_0>

Q1 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>

DBG will present some of the findings from our own analysis conducted in 2020 in a condensed manner. We do of course stand ready to provide further insights if and as considered helpful by ESMA. We compared the impact of the COVID-19 crisis on indices of equity markets in Europe comprising both markets with a short selling ban (the 'ban basket') and markets without a ban (the 'non-ban basket').

The COVID-19 crisis clearly runs through three phases from January to May 2020: Pre-crash period (until 20 February), the Crash period (from 20 February to 18 March), and the Post-crash period (from 18 March onwards). The crash starts for all markets simultaneously with a downturn on 20 February. That phase ends for all markets on 18 March with beginning of the recovery. Our findings suggest that the market recovery started with the introduction of the short selling bans, but with stronger recovery for indices without a short selling ban. On average, the ban basket seems to have declined more (-42,2%) and recovered less (19,8%) compared to the non-ban basket (-34% / 25,2%). The DAX marginally had the strongest decline and the strongest recovery within the non-ban basket and performed better than all indices for which a short-selling ban had been imposed.

While volatility in Europe (VSTOXX) and globally (VIX) developed similarly, a comparison of volatility between the Germany (VDAX) and the France (VCAC) reveals a parallel performance with VDAX being marginally higher during the ban period. Two other volatility measures – return volatility and the price range between highest and lowest trade price per trading day – show a better performance for the DAX than for the CAC. In addition to DAX / CAC comparisons of volatility, we conducted an analysis of market quality with respect to liquidity and turnover of the two indices during the COVID-19 crisis. The DAX shows better performance in both dimensions. The bid-ask spreads suggest a higher liquidity of the DAX as a non-ban index compared to the CAC with a short selling ban. The turnover measure shows similar behavior of DAX and CAC in the first two phases with the DAX leading in relative turnover. During the ban period that gap between CAC and DAX even widens.

In sum, our findings suggest that in times of massive market movements during March and May 2020 liquidity consolidates at the place of price determination and seeks reliability, then and even more then, all types of flow, also short sellers, should participate in markets on equal terms. In our analysis, intended effects of the ban on the development of prices and volatility in the European ban basket could not be observed. While market downturn and recovery

occurred simultaneously for all markets analyzed, ban-markets on average declined more and recovered less. The non-ban basket on average performed even better than the ban basket in the phase when all market recovered. At the same time, we observe, that in a ban market (CAC) measures of market quality – liquidity, volatility, turnover – performed less favourable compared to an index without a ban (DAX).

ESMA's own analysis on the impact of long-term short selling bans appears to be inconclusive, for example the deterioration of liquidity for banned stocks versus reduced volatility and there is no clear evidence as regards displacement. Instead we conclude that the observations in our sample of analysis confirm that short selling bans are detrimental to markets and market participants.

Furthermore, we believe that in this consultation paper the academic literature has not been properly reflected and that the selection of arguments appears to be incomplete as reasoning of RCAs that did not impose bans is not sufficiently referred to. We would like to point to the vast amount of academic research on the impact of imposing bans on covered short selling positions. The WFE's review of the academic literature has compiled empirical evidence which almost unanimously points towards short-selling bans being disruptive for the effective functioning of markets, as they are found to reduce liquidity, increase price inefficiency and hamper price discovery. This evidence suggests, contrary to regulatory objectives, that banning short selling during periods of heightened uncertainty exacerbates market volatility.

DBG shares ESMA's view that the current framework supports RCA's capacity to address concerns on financial stability and we therefore agree it should remain available to RCAs in case of developments impacting the resiliency of financial markets. However, DBG questions the alleged need for operational improvements and calls ESMA to carefully re-consider the changes to the scope and competencies of the regime.

<ESMA_QUESTION_SSRR_1>

Q2 What are your views on the proposed clarifications?

<ESMA_QUESTION_SSRR_2>

DBG agrees with ESMA's proposal to replace the outdated reference to Delegated Regulation 1287/2006 in Art. 2(1)(j)(v) SSR with a reference to RTS 22 with the result that the RCA for instruments covered by Article 2(1)(j)(v) SSR coincides with the competent authority of the most relevant market in terms of liquidity for transaction reporting as identified pursuant to RTS 22.

While we concur with the proposed clarifications, we ask ESMA to read our responses to Questions 2 and 3 in conjunction, given the potential implications that may result from the proposed amendments to Art. 20(2) SSR.

<ESMA_QUESTION_SSRR_2>

Q3 Do you agree with the proposed clarification?

<ESMA_QUESTION_SSRR_3>

ESMA's proposal to amend Art. 20 (2) SSR so that the RCA for a particular share would be able to not only issue a long term ban for that share but at the same time would be able to impose a long term ban also on other financial instruments referencing to that share and for which this

authority also was the RCA according to Art. 2(1)(j) SSR would reinforce concentration of intervention powers with one individual national authority as the SSR does not provide for an alignment procedure in case the RCA according to Art. 2 (1)(j) SSR does not coincide with the national authority of the jurisdiction where the financial instrument is admitted to trading or is traded on a venue. In this respect we note that the most relevant market in terms of liquidity for transaction reporting as identified pursuant to Art. 16 (5)(a) RTS 22 for derivative based on that share is the most relevant market for that security. Hence, the RCA for a particular share would be in a position to impose a long-term short selling ban for that share and at the same time could impose a long-term ban for derivatives based on that share. Such distribution of intervention powers would not only lead to a substantial concentration of intervention powers with one individual national authority but at the same time would exclude the national authorities of jurisdictions where the instrument is traded on a trading venue from participation in the decision making process in case the RCA for that share is also the RCA for that financial instrument according to Art 2 (1)(j) (v) SSR.

In this regard we want to stress that short selling is a critical underpinning of efficient price discovery and liquidity provision. Moreover, a great many investment and risk management strategies rely on the ability to take 'long' and 'short' positions. These benefit a wide range of ordinary investors including pension funds and local governments. The loss of these benefits would need to be carefully balanced before determining that any intervention to prevent short selling was appropriate. Therefore, concentrating the power to issue a long-term ban with one RCA also for financial instruments which are not even traded within the jurisdiction of this RCA does not seem to be an appropriate allocation of competences between national authorities given the significant impacts a long term ban will have on local markets.

While it is important to effectively address events and developments constituting a threat to financial stability and market confidence in a harmonized way given the close inter-linkage between some EU-markets, it is also necessary to involve national competent authorities of affected markets in case of long term measures to ensure that the proportionality principle is applied appropriately. The decision whether a long term emergency measure is necessary to address the threat and whether the detrimental effects are not disproportionate to the benefits should be based on all relevant expertise which requires to involve the national authorities where the financial instrument is admitted to trading in order to ensure that their expertise is brought into the decision making process.

<ESMA_QUESTION_SSRR_3>

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?

<ESMA_QUESTION_SSRR_4>

DBG confirms the first aspect of ESMA's assessment. Those instruments are indeed primarily used for hedging market-wide risk as well as taking positions on broader market movements rather than taking positions in single shares. This is also evident by the risk spreading requirements imposed on index-tracking UCITS ETFs, i.e. UCITS regulations require that UCITS funds comply with certain investment restrictions aimed at ensuring a minimum level of diversification within the fund's investment portfolio. Furthermore, index-tracking UCITS ETFs have to demonstrate that the underlying index represents an adequate benchmark of the market to which it refers, thus again underlining the main objective of these instruments, which

is to provide investors with market-wide exposure rather than taking positions in individual shares.

Since these instruments are primarily used for market-wide investment purposes, any short-selling restriction of such instruments could lead to severe unintended consequences in their usage and functioning from an investor perspective, e.g. spreads of affected UCITS ETFs may widen significantly due to the removal of liquidity from the market and may thus reduce the overall attractiveness of such products for investors. Consequently, such products may no longer effectively serve their intended purpose of providing cost-effective exposure to the underlying market.

Also, if such instruments or derivatives on such instruments can no longer be sold short for hedging purposes, investors may actually have to sell the underlying shares themselves in order to reduce their overall risk position, thus potentially triggering further sales of shares with short selling prohibitions imposed.

DGB also agrees with second aspect of ESMA's assessment (different bans imposed by different RCAs may potentially make the same index, basket, ETF subject to different restrictive measures, whose scope may vary or even conflict with each other). The same holds true for the derivatives on indices, baskets or ETFs. The indirect inclusion of such instruments into the bans led to a confusion and difficulties in scope identification during last year. The inclusion of indices, baskets and ETFs into the long-term bans would result in a highly complex and intransparent framework which should be avoided at all cost.

<ESMA_QUESTION_SSRR_4>

Q5 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>

DBG disagrees with the proposed changes to Article 28. Clear responsibilities, rules for decision-making and procedures that allow for efficient processes to handle situations of especially, market stress, are of importance. However, we consider that some discretion by RCAs should remain in order to avoid redundancies and organizational overhead, therefore, ESMA needs to focus on ensuring that legislation is implemented as intended by the legislator.

Importantly, there is a difference between improving consistency and convergence on the one hand side and asking for more ESMA powers on the other. It is crucial to recognize that competent authorities play a key role regarding direct supervision, they have the expertise required to fulfill supervisory functions for their markets. Perhaps it would be helpful to have ESMA participating rather as an observer with RCAs to support supervisory convergence. At the moment, we consider the cooperation between the competent authorities and ESMA to work smoothly. We would like to encourage ESMA to abstain from decisions that might lead to a deterioration of the current setup.

<ESMA_QUESTION_SSRR_5>

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

<ESMA_QUESTION_SSRR_6>

DBG disagrees with ESMA that the list of adverse events and developments currently contained in Article 24(1) of Delegated Regulation 918/2012 should be amended. Currently the list consists of the triggers related to financial markets, e.g. crisis, bankruptcy etc. Pandemic or epidemic is a widespread occurrence of a disease that based on previous years' experience most likely would have an economic and financial effect. However, ESMA and RCAs should focus on the financial markets and on the events on those financial markets and not global catastrophes.

<ESMA_QUESTION_SSRR_6>

Q7 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>

DBG is supporting the intention of ESMA to increase transparency and improve coordination of publication of the information concerning the short-term short selling ban on the adopting RCA's and ESMA's website that would help all market participants to have the most up-to-date information.

However, DBG does not support the proposal in point c) that does not allow RCAs to oppose a short-term ban meaning that the RCA of the relevant market would have a power to introduce short-term measures on the same stocks traded on various markets as well as related instruments that contribute to increasing NSPs. This is especially relevant for derivatives markets where liquidity is not with the most relevant exchange of the underlying. In such cases ESMA should recognize the individual judgment and expertise of the RCAs especially in case the short-term ban is referring to a national incident or event. Additionally, in case of any significant price movements of a derivative price, exchanges have risk mechanisms and volatility interruptions in place that would be triggered and would help to ensure orderly trading on our trading venue during highly volatile and stressed market phases.

However, we agree with ESMA that short-term short selling bans should be limited to shares and debt instruments and not extended to indices or derivatives that are rather used for hedging purposes.

<ESMA_QUESTION_SSRR_7>

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

<ESMA_QUESTION_SSRR_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SSRR_8>

Q9 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>

While we take note that ESMA's analysis and considerations regarding uncovered short selling are solely focused on shares and hence do not take into account potential amendments of the regime for other financial instruments, we would also see value in raising ESMA's attention to uncovered short selling activities in sovereign bonds. The following part will explain in more depth why a CCP's default management process follows the logic of reducing economic exposures and therefore should be exempt from the restrictions on uncovered short sales in sovereign debt resulting from Art. 13 of (EU) No 236/2012. We think the upcoming review of the Short Selling Regulation provides a suitable opportunity to further improve default management procedures and would be grateful if ESMA would take our argumentation into consideration.

The overall goal of CCP default management is to provide stability to the financial markets. The CCP acts as a buyer to every seller and vice versa. In case of a defaulting member, default management takes over the positions (obligations) of the defaulted party and assures the fulfilment of these versus the counterparty on the other side of the trades. Default management is key to prevent wider contagion of default risk in the system.

When a clearing member defaults while having open repo positions (the front leg has settled while the term leg has not yet settled), the CCP takes over the future obligations, e.g. in the case of a cash taker default, the CCP will have to deliver cash at a future date $T+n$ and will receive a security at $T+n$. Therefore, the CCP is economically long the bond, and to offset the market risk the CCP will need to sell the bond and borrow this exact bond in a reverse repo transaction at time T .

Default management should first do the cash bond trade and then do the corresponding repo as a second step, as the main risk to the CCP and wider financial system is on the outright bond trade. In the event of a cash taker trade, where the underlying deal collateral is government bonds, the prohibition of uncovered short selling (Art. 13 of (EU) No 236/2012) forces the Default Management Procedure (DMP) to execute the repo first and only sell the bond in a second step. This increases the time it takes to hedge the risk, exposing the CCP to further market moves. Furthermore, when asking for (reverse) repo quotes the CCP discloses important trading information to market participants at a sensitive time.

The CCP is not economically short the bond. The reverse repo is only needed to bridge the time between the delivery of the sale and the receipt of the identical security in the term leg of the original repo. The CCP has sufficient connections to market makers and market access to assure a proper reverse repo coverage for timely settlement.

Article 13 is exempting participants that hedge economic exposure to a bond that is correlated to such government bond. The CCP default management is hedging economic exposure to the very same bond it is selling. Article 17 is exempting market making activities. Proper default management execution is key to functioning repo markets and efficiency of the financial system. That is why we request adding the CCP to the exemptions for default management purposes.

<ESMA_QUESTION_SSRR_9>

Q10 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SSRR_10>

Q11 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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SSRR_11>

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?

<ESMA_QUESTION_SSRR_12>
DBG is of the opinion that Article 16 of SSR still permits an adequate monitoring of the relevant shares. ESMA has not provided any evidence that short selling on shares with significant trading volumes within the EU have an impact on the rest of the market in the form of potential systemic risks, abusive behaviour or creation of disorderly trading conditions for the EU markets where they are traded.

In addition, we would see a big complexity in tracking the turnover at different points in time, as it is constantly changing number. Shares traded around the threshold could potentially get in and out of scope from one day to another, which might create a confusion between market participants, competent authorities and exchanges.

<ESMA_QUESTION_SSRR_12>

Q13 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>
No, please also see our response to question 12.
<ESMA_QUESTION_SSRR_13>

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.

<ESMA_QUESTION_SSRR_14>
DBG concurs with ESMA's preliminary views and is not in favor of modifying the threshold for public disclosure of significant NSPs.
<ESMA_QUESTION_SSRR_14>

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?

<ESMA_QUESTION_SSRR_15>

DBG agrees that the publication of aggregated NSPs by issuer on a regular basis would foster transparency of NSPs. It would ensure that all market participants are adequately informed about the extent to which short selling is affecting prices. However, we would like to point out that making public aggregated NSPs by issuer may unduly expose the position of notifying entities, as it has been shown for certain shares during the WallStreetsBet period in 2021. Although RCAs are asked to periodically publish these data on a voluntary basis, ESMA noted that there is only a small number of RCAs that publish such data. Nevertheless, additional guidelines or Q&As may help in providing guidance to RCAs when publishing such data to foster more transparency. Hence, we do not suggest a change of Level 1 that makes the publication of aggregated NSPs compulsory. Regarding a centralized notification and publication system please see our response to question 17.

<ESMA_QUESTION_SSRR_15>

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.

<ESMA_QUESTION_SSRR_16>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SSRR_16>

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.

<ESMA_QUESTION_SSRR_17>

DBG is of the opinion that a comprehensive database may be a good tool to enable supervisory authorities to properly monitor and analyze market developments with a view to protect market participants, to prevent unlawful behaviors and to ultimately ensure stability. Before concluding on the necessity and design choices of such supervisory database, we encourage ESMA and RCAs to reflect on the prerequisites that shall be met to provide a meaningful contribution for supervisory practices across the EU.

Importantly, we call to integrate a potential centralized database into the existing balanced allocation of legal responsibilities and mandates among authorities for deciding on supervisory measures into short selling. Furthermore, we see value in re-assessing the operational and functional challenges that come with an aggregation of data from different sources. Finally, given that supervisory data sets entail sensitive data which are compiled and reported for clearly determined and legally mandated supervisory purposes only, a potentially undefined re-use of supervisory data by other stakeholders would be questionable. Any data sharing that would facilitate the re-use of data for other purposes than those originally mandated shall be weighed against the principles of data protection and confidentiality.

<ESMA_QUESTION_SSRR_17>