esma European Securities and Markets Authority

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

21 September 2021 | ESMA70-156-4948

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	Association of Proprietary Traders
Activity	Investment Services
Are you representing an association?	☒
Country/Region	Netherlands

Please make your introductory comments below, if any.

<ESMA_QUESTION_SSRR_0>
APT welcomes the opportunity to provide feedback on certain aspects of the Short Selling Regulation. APT is the trade association of proprietary trading firms/market makers based in the Netherlands.Trading firms ensure liquidity on trading venues, by issuing prices in all circumstances and by continuously buying and selling financial instruments. EU based trading firms are leading liquidity providers on major trading venues in the Union and around the world.

Liquidity provision lessens the volatility of a stock. In highly stressed markets, liquidity provision is key to managing price volatility. Short-selling bans can hamper firms'ability to provide such liquidity.
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SSRR_1>

Q2 What are your views on the proposed clarifications?

<ESMA_QUESTION_SSRR_2>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SSRR_2>

Q3 Do you agree with the proposed clarification?

<ESMA_QUESTION_SSRR_3>
TYPE YOUR TEXT HERE
<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>

APT supports the proposed clarification that ETFs, indices, and baskets containing a stock that is under a short-selling ban should be excluded from the scope of long-term bans, as removing these instruments from the scope can contribute to preserving liquidity and price formation in these instruments, also in times of high volatility. We do note in this regards that market participants do not gain short exposures to indices, baskets, and ETFs to short sell one single underlying component security. <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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SSRR_5>

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

<ESMA_QUESTION_SSRR_6>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<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>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_SSRR_17>