

ESMA – Consultation Paper: Review of certain aspects of the Short Selling Regulation

AFME and ISDA response

19 November 2021

Introduction

The Association for Financial Markets in Europe (AFME) and the International Swaps and Derivatives Association (ISDA) welcome the opportunity to comment on ESMA's review of certain aspects of the Short Selling Regulation.

About AFME

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors, and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME¹ is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 960 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org.

Together we welcome the opportunity to respond to this consultation and have provided our comments to each of the questions below. We would be happy to talk through any aspects of our response with ESMA, if it would be helpful.

Executive summary

We set out below some key points that we then further address in our responses below.

- Impact of short selling bans:
 - AFME is concerned with ESMA's analysis on the effects of short-selling bans. Instead, we reference recent analysis conducted by the World Federation of Exchanges (WFE) which suggests that short-selling bans can have a detrimental impact on financial markets in terms

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of liquidity and price discovery. Members also observed adverse effects on liquidity, costs of trading and performance for those markets which were subject to short selling bans in 2020, along with higher volatility.

- In light of the WFE report and other analyses assessing the effectiveness of short-selling bans, AFME is unsupportive of their use. However, should they continue to be deployed, we recommend that ESMA considers the following points.
- Art.2 of SSR:
 - On the definition of the Relevant Competent Authority, members recommend a more targeted approach in order to guarantee legal certainty. Indeed, members would like to recall the challenges that market participants faced with the definition of the scope of the ban issued by CONSOB during the Covid-19 emergency measures. In addition to a more targeted approach for the scope of the bans, members recommend that the proposed approach also allows for the exclusion of indices, baskets, and ETFs.
- Coordination across different RCAs:
 - On the coordination across different jurisdictions, additional clarity and standardisation is necessary. RCAs should issue bans in an orderly manner clarifying key features of a ban on an up-front basis so that market participants can have the time and necessary clarity regarding the scope of a ban to respond and adapt.
 - We believe that ESMA's use of its powers should be viewed as a last resort solution, recognising that RCAs have a better understanding of national markets, in accordance with the principle of subsidiarity.
- Indices, baskets, and ETFs:
 - AFME supports the proposal of excluding indices, baskets, and ETFs in the context of long-term bans and, additionally, any indices where the threshold is not intended to circumvent the ban.
- Calculation of NSPs:
 - AFME supports the inclusion of subscription rights in the calculation of the NSP. Additionally, we recommend applying the same approach to convertible bonds on the basis that they embed a subscription right to the share and their exclusion leads to misleading disclosures by firms of short positions in an equity where they hold an offsetting long position in the related convertible bond.
- List of exempted shares:
 - AFME is unsupportive of reducing the number of exempted shares. We believe that there is insufficient evidence and analysis to support such narrowed scope and suggest that there are extra-territorial implications which could have unintended consequences. We are also concerned by the introduction of qualitative parameters for the identification of shares subject to the full set of SSR obligations on the same basis
- Public disclosure of significant NSPs in shares:
 - AFME agrees with ESMA's proposal to maintain the current state of play on the threshold for the public disclosure of significant NSPs in shares. We would like to emphasise the importance of ensuring a consistent application of the public disclosure rules by all RCAs in order to avoid confusion for market participants or unwarranted disclosures in specific jurisdictions.

- Centralised notification and publication system:
 - AFME supports the proposal of a centralised notification and publication system.
- Changes in the locate requirements:
 - AFME does not support ESMA's proposals in relation to the locate arrangements. Such measures would be detrimental to the ability of market participants to engage in short selling activity and reducing the ability of market participants to conduct short selling could negatively impact market liquidity and efficiency.
- Further recommendations:
 - In relation to market maker exemptions, members believe that it is of the utmost importance that the envisaged changes do not undermine the market-making exemption set at Level 1, as the weakening of the exemption would have detrimental effect on liquidity and effectiveness of markets.
 - We also specifically call for ESMA to restate, and for the Commission to endorse, the aspects of the Technical Advice submitted by ESMA in December 2017 relating to OTC market making activities.

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

Members do not agree with ESMA's analysis. According to Members' internal analyses, there is no evidence that the bans reduced market volatility. Overall, Members query the benefits of short-selling bans. Contrary to ESMA's observation, Members have highlighted analysis underpinned by empirical and objective data that suggests that short-selling bans can have a detrimental impact on financial markets.

In April 2020, the World Federation of Exchanges (WFE) released an analysis² on the bans issued during Covid-19. In their analysis, they suggest that short-selling bans not only reduce liquidity, but also increase price inefficiency and hamper price discovery. Additionally, they register unintended consequences on other markets as well, such as option markets.

By way of example, during the Covid-19-related bans, we observed a degradation in liquidity across the impacted markets. Members' analyses identified both lower volumes in markets subject to short selling bans, as well as somewhat higher volatility, along with higher costs of trading reflected in widened spreads, as compared to spreads prior to the imposition of the bans. Performance in markets which were subject to short selling restrictions, as proxied by a basket of market-cap weighted SXXP restricted names, also consistently under-performed the Stoxx600 from mid-March (whereas performance was in-line prior to the bans). This could be explained by fact that following the imposition of the short selling bans, a sub-set of market participants stopped or reduced their trading activity in restricted jurisdictions. Many firms pulled out of the market in the immediate days following the inception of the bans, particularly where there was a lack of clarity on the exact instrument scope of the ban. This reduced activity coincided with a rally in equities, and investors positioning for the rebound (i.e. increasing the long; short ratios), thereby acting as a headwind for banned markets to fully benefit and out-perform.

To some extent, we also believe the liquidity was impacted by the market maker exemption process. The ESMA Guidelines state a firm can only make use of the exemption where previous notification of intent to

² <https://www.world-exchanges.org/our-work/articles/wfe-research-what-does-academic-research-say-about-short-selling-bans>

make use of the exemption has been made in writing to the relevant competent authority at least 30 calendar days before the intended first use of the exemption. The Guidelines acknowledge that the 30 days advanced notice requirement might pose practical difficulties in some particular instances (e.g., shares in an IPO) and in that case, the regulator should be notified as soon as possible, in order to enable them to process the application in less than 30 days.

A similar scenario also exists when firms need to augment the symbol universe for which they are registered market makers. MiFID II RTS 8 programmes across all major European exchanges and MTFs have standardised requirements, however the universe of symbols traded under these schemes may change, based on a variety of factors, including, for instance, if an exchange has added a new symbol. Certain exchanges require firms to start quoting immediately after they are notified that a new symbol is listed or included in the scheme. Given the intrinsic link between the market making exemption and liquidity provision to the market, it is not practicable to wait 30 days before firms can make use of the exemption. In cases where firms must wait for a positive acknowledgement from an RCA, they may be unable to provide liquidity in that symbol for the duration of the period until that acknowledgement is received. Even if market making activities are out of scope of the ban, without the instrument-by-instrument exemption in place, market makers are required to hold shares in long inventory prior to effecting a sell. This may not be practicable to the overall goal of liquidity provision and could cause firms to stop quoting until the inventory is available or the exemption is in place.

Given the impact this has on liquidity provision capabilities, we would welcome ESMA's review of the 30 day notification process and consideration of a one-way notification process to streamline this process i.e., firms can start to make use of the exemption from the date it is sent and RCAs confirm they do not intend to prohibit the use of the exemption while the notification is reviewed– as is contemplated in part 17 of the ESMA Guidelines.

We also note that there is a lack of supervisory convergence across the EEA by NCAs in the application of this requirement, with some NCA's only requiring a one-way application and others applying a 30 day (and occasionally greater) express permission approach. Of the NCAs which apply the 30-day express permission approach, certain NCAs will generally provide their permission within 2 – 3 working days, whereas others allow the 30-day period to elapse before asking for further clarifications (often repeatedly), thereby re-setting the 'clock' and meaning that market makers are deterred from providing liquidity in particular names for up to 4 months, pending the availability of the exemption.

Overall, although AFME appreciates ESMA's intentions to provide further clarity and guidance in relation to the Short Selling Regulation, there are further points concerning the scope of the bans which need to be clarified.

Specifically, we would like to suggest the following recommendations:

1. Ensuring that market making exemption can always be relied on, including for relevant related ETFs, baskets, and indices. This is especially key when contemplating that ETFs, baskets and indices are often used by market makers to hedge their risk. Therefore, banning these instruments is particularly detrimental to market makers ability to provide liquidity to the market if they are unable to hedge.
2. Ensuring that the rolling of derivative positions is out of scope.
3. Ensuring that short equity security positions with offsetting convertible bond positions hedging (which usually involved shorting the underlying share) is out of scope on the basis that they

embed a subscription right to the share and their exclusion leads to misleading disclosures by firms of short positions with underlying convertible bond hedges.

4. Clarifying that passive changes in short positions do not need to be neutralised.
5. Market Making activities of a third country firm defined according to the definition of Market Making activity in Art.2(1) (k) (i) – (iii), that do not meet the venue requirements, should be considered out of scope.

With regard to point 5, AFME would like to outline that the extension of short sale restrictions last year captured third country broker-dealers, who may not have been active in ordinary shares trading, but in other products, such as ADRs and futures, which were then in scope and that this may have unintended consequences.

Question 2: What are your views on the proposed clarifications?

Members agree with ESMA's proposal to clarify the approach for identifying the RCA for the application of emergency measures, as the short-selling bans issued in 2020 as a response to the Covid-19 pandemic raised regulatory uncertainty regarding the scope of their application.

By way of example, market participants faced several challenges in identifying the perimeter of the ban issued by the CONSOB in terms of instruments which were in-scope. Specifically, market participants struggled to understand whether index derivatives traded on a trading venue outside of Italy would fall under the scope of the CONSOB's ban.

AFME is therefore supportive of a more targeted approach whereby all market participants have certainty at the same time as to the scope of a particular ban (thereby eliminating disruption to permissible trading and removing the requirement for subsequent, and potentially conflicting, guidance to be issued by RCAs).

Additionally, and in line with our response under question 4, any approaches should allow the exclusion of indices, baskets, and ETFs from the scope of long-term bans. Alternatively, should ESMA instead introduce a percentage-based weighting approach to indices, baskets and ETFs, our view is that the percentage threshold should be calibrated so that the bans only apply to an index, basket, or ETF with more than 50% weighting of restricted shares.

On the same note, while the market welcomed the decision of BaFIN to exclude Eurex listed index-based instruments from the scope of the short-selling ban in during the first phase of the Covid-19 pandemic, the lack of a standardised approach across different RCAs resulted in opportunities for regulatory arbitrage, undermining market stability and creating uncertainty amongst participants on the application of emergency requirements.

Overall, members would welcome further clarity on ESMA's proposals and how they would consider the points raised above.

Question 3: Do you agree with the proposed clarification?

Members would not oppose the proposed clarification on the basis that it aligns with efficient practices for RCAs. Specifically, we recommend that RCAs issue bans in an orderly manner and market participants have enough time to analyse the impact of the bans.

For example, bans should be announced as close as possible after the close of the market, and should address in the same format certain minimum information points regarding (a) the scope of a ban, such as impacted instruments and activity (i.e. short selling and/or increasing NSPs), and (b) if there are exemptions for (i) market making activity, (ii) indices/baskets/ETFs (if ESMA does not adopt its current proposals under Question 4), (iii) passive increases in NSPs due to a delta variation, (iv) rolling of existing NSPs via expiring derivatives, (v) hedging the equity component of convertible bonds and subscription rights previously purchased, and (vi) sales to rebalance an index.

Furthermore, RCAs should provide clear information on whether new short selling bans refer to entering into new NSPs or increasing existing ones.

Finally, ESMA should establish standards to issue the bans in order to create some form of equivalence between the bans of different RCAs, helping market participants to navigate the different approaches.

Question 4: 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?

AFME strongly supports the proposal of excluding indices, baskets and ETFs from the scope of the long-term bans. AFME can see the benefit of a clarification that any trading in indices, baskets and ETFs in a manner that clearly demonstrates it is intending to circumvent the ban, should be prohibited.

That said, the term 'clearly demonstrates' could be subject to interpretation by different RCAs and market participants, and AFME is not supportive of any changes which may introduce additional uncertainty. It may therefore be appropriate to include guidance on activity that clearly demonstrates an intention to circumvent a ban (which should be consulted upon).

Should ESMA instead introduce a percentage-based weighting approach to indices, baskets and ETFs, AFME would welcome additional clarity on the alternative proposal of the percentage-based weighting approach to ensure consistency across different jurisdictions.

Our view is that the percentage threshold should be calibrated so that where an index, basket or ETF contains no more than 50% weighting of restricted shares it should be considered as outside of the scope of the relevant ban.

Nevertheless, we feel that this approach may lead to additional operational complexities, which are otherwise mitigated if these instruments are removed from the scope. Members also noted that many issuers do not necessarily make available on a reasonable commercial basis the specific weightings within their index-based products. As such, it is possible that participants may not be able to determine relevant constituent weightings with a financial product. As a result, a general exemption for a blanket exclusion of indices, baskets, and ETFs, supported by an appropriately defined prohibition for circumventing behaviour would be more appropriate.

Question 5: Do you agree with the proposed alignment of the conditions to adopt measures under Article 20 and Article 28 of SSR?

Members welcome procedural alignments and standards to the extent that they facilitate the orderly introduction of restrictions where an RCA has deemed it necessary to impose such (noting however AFME's response to Question 1 above on the efficacy of short selling restrictions). However, we believe that ESMA's use of their powers should be viewed as a last resort solution recognising that RCAs have the capacity to understand local markets better and in line with the principle of subsidiarity. Nor would we support the

introduction of market-wide bans where particular RCAs have not deemed it necessary or appropriate to introduce restrictions in the markets for which they have competence

Additionally, stronger standardisation would also benefit RCAs and ESMA, as it would enhance clarity in the market and facilitate a better coordination. (See our response to Question 3 for further details on the minimum information we believe should be provided as standard when an RCA introduces any restrictions on short selling). ESMA should act as the primary function to provide better and more consistent communication across European RCAs. However, it should not infringe on the local RCAs ability to manage the functioning of their markets.

As stated above, ESMA's intervention should be considered as a last resort solution, as a stronger consolidation via ESMA can be detrimental, reducing RCAs' flexibility. Should consolidation be pursued, we would like to outline the proposal of competent authorities retaining their SSR powers. A move towards consolidation via ESMA would create a risk of duplication.

Question 6: do you agree with the proposed amendments to Article 24 of Delegated Regulation 918/2012?

Our feedback for the proposed amendments to Article 24 of the Delegated Regulation 918/2021 is included in the answer to Question 7 below.

Question 7: Do you agree with the proposed amendments to the SSR and, more specifically, the mediation procedure under Article 23 of SSR?

Members recommend making the proposed amendments consistent with the overall SSR framework.

More specifically, AFME is of the view that RCAs should have the ability to challenge other RCA's bans if needed. It should be recognised that RCAs have a direct connection to national markets and, therefore, may have a better understanding of the challenges the particular market is facing.

Members also note that the subpoint d. in paragraph 156 is overly prescriptive and restricts the flexibility that RCAs need to implement possible bans. Moreover, members would welcome further clarity on whether the market making exemption will continue to exist for the NSPs bans alongside the exclusion of exclusion of indices, baskets, and ETFs. If not, we note that this would have a detrimental effect on liquidity.

Question 8: What are your views on ESMA's proposal to include subscription rights in the calculation of NSPs in shares?

Overall, AFME supports the inclusion of subscription rights in the calculation of the NSP. Additionally, and for the same reason we recommend applying the same approach to convertible bonds. If an investor has an economically offsetting long position in a convertible bond to a short position in the related equity security, then by excluding the convertible bond position in the NSP calculation, any resulting short disclosure could be potentially misleading to the market and issuers alike when a firm is risk flat.

The current NSP calculation methodology is based on a 2013 ESMA Q&A which should be updated. Based on this Q&A, the current NSP calculation methodology distinguishes between convertible bonds that convert into existing shares (exchangeable bonds) and those that convert into to be issued shares, or where the conversion could be into either existing or newly issued shares at the discretion of the issuer.

From an operational perspective this is extremely challenging to code into disclosure calculation systems and as mentioned above may result in short disclosures being made where there is no economic short position taken and the firm is risk flat, which is misleading to the issuer and market. From a technical perspective, convertible bonds are bonds with an embedded subscription right for the issuer's securities so should be treated the same as subscription rights.

Question 9: 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?

AFME is unsupportive of changing the locate requirements. We do not believe that current analysis indicates that there is a requirement to reinforce or make amendments to existing locate standards, which we believe are largely well-functioning.

Such measures would be detrimental to the ability of market participants to engage in short selling activity. Short selling is a well-established investment activity, essential for market making and widely accepted by investors and regulators (e.g. IOSCO) as helping to enhance price discovery, counteract supply/demand imbalances, hedge other positions/exposures and provide liquidity to the market in the relevant securities. We further note that short selling is typically part of a broader strategy that includes long positions.

Reducing the ability of market participants to conduct short selling, by imposing stricter locate requirements, could negatively impact market liquidity and efficiency.

Additionally, AFME would like to take this opportunity to raise its concerns in relation to the data (e.g., data on meme stocks and naked shorts) that ESMA uses to support the proposals on naked short positions, outlined in paragraphs 168 to 173. We do not see anything in the data that supports the conclusion that the failures are as a result of locate providers being unable to provide securities to fulfil the locates.

We also note that cash penalties are due to be introduced in February 2022, as part of the CSDR Settlement Discipline Regime. AFME is supportive of the introduction of cash penalties under CSDR and considers these penalties as the most effective and appropriate policy tool for addressing the risk of non-delivery on settlement date.

We also note that Proposal A implies that the locate provider would suffer a penalty if it does not settle. If so, please see our comments above regarding CSDR and the overlay of the CSDR penalties regime that will come into effect on 1 February 2022.

In relation to option B, we note that, while the proposal may simplify the approach in one way, it will create additional burdens in the form of substantive repapering. Moreover, the requirement under Proposal B, in the event of a fail to send an instruction to the third party to procure the shares, would create uncertainty for market participants who may have obtained a locate from multiple third parties. It is unclear which third party the instruction should be sent to. If the instruction is sent to multiple parties, this could lead to multiple and unnecessary purchases of the failing securities.

In conclusion, we would like to reiterate that it believes the current locate regime functions well and that reinforcing third parties' commitment in the manner proposed will simply impede short selling activities, which are useful for price discovery purposes and the efficient functioning of the market, as stated under question 1.

Question 10: Do you agree with this introducing a five-year-long record-keeping obligation for locate arrangements? If not, please justify your answer.

Members support the proposal to introduce a five-year record-keeping period, as this aligns with other record keeping obligations in other regulations/directives. However, this obligation should not require Members to store data/documents in a format which is inconsistent with other record-keeping obligations. It is also relevant to note that the proposal may result in duplicative requirements, for instance, overlapping with MiFID II obligations.

Question 11: Do you agree with reinforcing and harmonising sanctions for ‘naked’ short selling along the proposed lines? If not, please justify your answer.

We do not agree with ESMA’s proposals in relation to reinforcing and harmonising sanctions for ‘naked’ short selling for the following reasons.

Firstly, we believe that there is no evidence of a high level of ‘naked’ short selling in the EU that could justify the reinforcement of the pecuniary sanctions. Additionally, members are not aware of significant issues in relation to sanctions.

Secondly, the proposals lack in clarity in terms of (a) the level of fines, and (b) how Member States’ sanctions do not properly address ‘naked’ short selling.

In this regard, we believe that CSDR represents a better tool *specifically* in terms of sanctions and members would welcome further clarity on how the SSR would align with the CSDR framework.

Finally, on the proposal outlined in paragraph 205 of the consultation, we do not agree with the suggestions of establishing a minimum amount that RCAs must impose under the maximum administrative pecuniary sanctions in the event of an infringement of Art.12(1) of SSR. It is unclear how ESMA intends to harmonise SSR sanctions with those in MAR, creating a risk of different interpretations and legal uncertainty. We therefore recommend a case-by-case approach and believe that it is important that ESMA considers the different approaches that RCAs are currently adopting in different Member States.

Question 12: 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?

AFME is unsupportive of this proposal due to the lack of in-depth analysis on the impact of a 40% threshold. It is hard to understand which specific shares would be brought within scope and we believe ESMA would need to provide the data on this for market participants to be able to assess the practical consequences. Indeed, we believe that the proposal can have unintended consequences which need to be addressed, particularly in light of the answer to question 1 above, that short selling bans can have a detrimental market impact.

AFME notes that the scope of the SSR is already broad and can impact non-EU market makers which are unable to benefit from the market making exemption (as they are not members of EU venues) but traded shares are subject to the SSR due to the current 50% turnover threshold. It is not insignificant for third country market makers to put in borrow/locate arrangements prior to trading and disclose NSPs for shares in which their activity is equivalent to those activities carried out by firms which are able to benefit from the

market making exemption (and may therefore have an impact on liquidity in the third country markets in which those shares trade).

We also note that the list of exempted shares is referenced in other regulations, such as CSDR and the disclosure regime under MAR. Therefore, it is unclear how any proposed changes could impact the broader regulatory framework. As such, members would welcome further clarity on if it is ESMA's intention to consult on the impact of this proposal on the broader regulatory framework.

Overall, we believe that the threshold of 50% of the turnover of shares traded in the EU represents a more logical approach and would not have any unintended consequences. Additionally, the EU should work towards alignment with other market approaches, including in the US. We believe that a threshold of 40% is more likely to create uncertainty and a potential risk for regulatory arbitrage.

If changes are to be made, we require further consultation and in-depth analysis.

Question 13: 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.

AFME does not support the introduction of qualitative parameters for the identification of shares subject to the full set of SSR obligations, as it is crucial to consider the volumes traded when defining the application of SSR obligations to a set of shares.

Additionally, qualitative criteria would leave space for regulatory uncertainty in terms of extra-territorial effects. In particular, they could result in harmonisation issues between the SSR framework in the US and the EU, as the first tend to focus on aggregation units and the latter on the entities. Similarly, this could create conflicts between the EU and other jurisdictions and may impact the enforcement of bans by EU RCAs.

Finally, it is unclear whether qualitative criteria would impact firms' eligibility for market maker exemptions. For instance, qualitative parameters would grant RCAs with more discretionary powers and, therefore, market participants might face additional challenges in the application for market making exemptions.

Question 14: 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.

Members agree with ESMA's analysis and its proposal to maintain the current thresholds and requirements.

Additionally, we would like to emphasise the importance of ensuring a consistent application of the public disclosure rules by all RCAs in order to avoid confusion for market participants or unwarranted disclosures in specific jurisdictions.

Question 15: 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?

Whilst AFME does not have strong views on this proposal, some of our members do not see the benefit of an anonymised aggregated NSPs by issuer on a regular basis compared to ad hoc publication.

Others however note that it would be helpful for ESMA to revisit the approach to NSPs. For example, the volume of disclosures continues to increase, the calculations are complex. Similarly, there is no recognition that in the case of subscription rights and convertible bonds, an NSP disclosure instead reflects a hedge (where the firm views itself as risk flat) and is not a true NSP. Please see our response to Question 8 above. The periodicity should also be reviewed so that it is meaningful. We would suggest that daily is impractical, but weekly or bi-weekly options should be considered.

We welcome further clarity on the proposed approach, including details of the benefits to ESMA, RCA's and market participants.

Question 16: 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.

Information on issued share capital for in-scope issuers is not always publicly available or published in a timely manner by issuers. Making this information centrally available for issued share capital and to be issued shared capital (in light of Question 8 proposals)- in a similar manner to the requirement for Transparency Directive reporting - would enable all market participants subject to disclosure requirements to report in a timely, consistent, and accurate manner.

We are aware of instances where AFME's members have experienced difficulties with NSP reporting due to inaccurate reference data, which would be prevented if there was a centrally available database containing this information.

Question 17: 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.

AFME strongly supports the proposal of a centralised system, which would reduce costs and administrative burdens. For instance, a single platform for the purpose of reporting, with the ability to view a journal or historical filings in order to reconcile our positions with those held by the regulator in order to complete Quality Assurance, would be helpful. However, members would welcome additional clarity on the details for such centralised system. In particular, the Dutch Loket portal is a good example of a user-friendly system. If it is agreed a central portal is needed, ESMA could establish a working group to agree on the functionality of the portal to ensure it captures user requirements.

AFME would support the development of a centralised website with an email subscription functionality so that market participants can be quickly updated of the terms of the potential ban and the ability to make submissions via XML or another feed-based format, similar to the BaFin MVP portal. AFME would also suggest considering a centralised portal which contains all in-scope issuers and their respective issued share capital (see our response to Question 16 above) (similar to in-scope sovereign debt) which would enable all market participants subject to disclosure requirements under the SSR to adopt a standard notification template and ensure the accuracy of the NSP calculation and issuer eligibility assessments.

As a general point, given the challenges that all market participants appear to have with regulator portals for submitting net short positions, members would request that ESMA extends the filing deadline for the first day that the threshold is reduced from 3.30pm local time to 5pm local time (or later). This would be very helpful as a number of portals are very slow and may have difficulty in coping with extra volumes coming in

from all market participants making their additional disclosures. In support of this position, we note that when the SSR entered into force, the submission of data was via a spreadsheet, with more efficient portals now in place, we urge ESMA to revisit the filing deadline. This would alleviate operational burdens on market participants.

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