ISE Response to ESMA's Consultation Paper on Short Selling Regulation – July 2017

The Irish Stock Exchange (ISE) welcomes the opportunity to respond to ESMA's Consultation Paper (ESMA70-145-127) on the evaluation of certain elements of the Short Selling Regulation.

The ISE operates the regulated market (Main Securities Market) in Ireland on which equity securities, government bonds, collective investment undertakings and debt securities are admitted. The ISE also operates three multilateral trading facilities, the Enterprise Securities Market, the Atlantic Securities Market and the Global Exchange Market.

Q1: Taking into account the different regulatory approaches and purposes of MiFID II and SSR, what are your views on the absence of alignment between the definition of *'market making activities*' in each of the capacities specified in Article 2(1)(k) of SSR and that of '*market maker*' in Article 4(1)(7) of MiFID II? Do you consider that this absence of alignment is not appropriate, and if so what would you suggest?

A: Taking into account the different regulatory approaches and purposes of MiFID II and SSR, the ISE is not concerned with the lack of alignment between the two. In fact, the ISE would caution against such alignment, particularly given that MiFID II generally refers to market making in the context of algorithmic trading strategies (Art 17 (3), (4) & Art 48, MiFID II). It is important to maintain a distinction between those members of trading venues who sign-up on a voluntary basis as market makers (incl. sell-side institutional brokers), and those investment firms pursuing a market making strategy under the definition in MiFID II that will be required to enter into written agreements (typically proprietary trading firms).

The ISE believes that the type of firms envisaged to be captured under SSR are those firms that sign-up to become market makers under the rules of a trading venue. Therefore the ISE does not see the benefit, and believes there could be confusion in aligning the two definitions.

Q7: Do you think that market makers should be able to notify the list of financial instruments by using indices, as long as they are market making in all the financial instruments included in the used indices? Besides indices, which other sectoral categories / classification could be used by market makers to indicate a group of financial instruments for which the market maker is seeking exemption? Please provide justifications.

A: We welcome ESMA's proposal to take a more flexible and pragmatic approach to the application of the exemption. We are aware that the market makers on the ISE find the current approach to be very burdensome, particularly for IPOs. We also understand that any changes to the approach must maintain the ability for the competent authorities to have full knowledge of which securities are in scope of the exemptions at all times for monitoring purposes. However, the proposal to grant exemptions based on indices or sectoral categories which require the market maker to undertake market making activities in all instruments within those indices or categories would not be a viable solution for the ISE market makers. Given the size of our market (57 shares as at 21st August) we grant approval for market making activities on a per instrument basis. As a result market makers do not sign-up to market make based on groups of securities. Furthermore, we do not wish to introduce a system which forces market makers to undertake those activities across a group of securities. Therefore we would

propose that the granting of an exemption per index or sectoral category does not require a market maker to undertake market making activities in all such securities. Where a market maker does not wish to undertake market making in all of the securities within an index/group, they should be required to provide the list of the relevant securities to the competent authority as part of the initial application, and then notify the competent authority in advance of any changes to that list, based on the constituents of the index/group.

Applications for exemptions for securities which are not captured by one of the groups but are within the same asset class (e.g. a share that is not part of any index), should similarly require a notification to the competent authority but in a much shorter timeframe. Once the market maker is an approved market maker on the trading venue, and has already secured the exemption in shares for example, then any additional shares should require only a notification of a few days.

Q8: Do you think that the 30-day period mentioned in Article 17(5) of the SSR should not apply when the notification refer to instrument admitted to trading for the first time on an EU trading venue? Please provide justifications.

A: The ISE is strongly of the view that the 30-day period mentioned in Article 17(5) of the SSR should not apply when the notification refers to an instrument admitted to trading for the first time on an EU trading venue. From a practical point of view, the details of the admission are not usually known to the trading venue 30 days in advance of the first trading date. As a result the trading venue is unable to inform its members of the new admission more than 30 days in advance. This makes the 30 day notification in advance of the first trading date impossible for the market maker. Therefore we would welcome a much shorter timeframe, and would suggest 5 days as being more suitable. We also believe that a notification should be sufficient where the instrument is in an asset class which the market maker already has exemptions in, and the trading venue has approved the firm as a market maker in that stock. This would mean that the competent authority would not have to react to the notification thereby reducing the related administrative burden.

Q9: What would you suggest to reduce the 30-day period mentioned in Article 17(5) of the SSR to provide for a faster process? What are your views on a quicker procedure for market makers that have already entered into a market making agreement/scheme with a trading venue or the issuer to classify as market maker in such venue? Please explain.

A: We believe that if the 30-day notification period remains in place it should only apply for completely new applications e.g.:

- Exemption for a security(-ies) in a different asset class.
- The first time a firm is approved as a market maker.

Once the exemption has been granted to a market maker for a particular asset class (-es), then the addition of any further instruments within that asset class for that market maker should require a notification only. We believe a notification c. 5 days in advance should be sufficient, on the basis that there is no fundamental change in the scope, and the competent authority continues to retain the right to withdraw the exemption at any time. Also, in this case the competent authority would not be obliged to react and inform that the notification meets the conditions for exemption thereby reducing the administrative burden with no impact on the level of oversight.