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Dear Sir / Madam

**DB response to ESMA's consultation paper on the evaluation of certain elements of the Short Selling Regulation**

Deutsche Bank (DB) welcomes the opportunity to comment on ESMA's consultation on the evaluation of certain elements of the Short Selling Regulation (SSR). DB is a leading Global market maker, across a number of asset classes, and plays a crucial role in providing liquidity to markets.

We support the joint response submitted by AFME / ISDA. In addition we would like to highlight two key areas:

1. We are of the view that the market making exemption should apply to market making activities irrespective of whether the market maker is dealing in a pure over-the-counter (OTC) instrument or instruments which are traded on a trading venue (TOTV). If market makers dealing in OTC instruments are not able to qualify for the exemption they will face extra barriers and costs in conducting their market making activities, adversely affecting market liquidity and efficiency to the detriment of the end users of those markets.
2. We support the extension of the scope of products which are eligible for the market maker exemption. Without the exemption, market makers would need to meet all the conditions for undertaking a short sale in sovereign debt which would impair the market making function, increase costs to the market maker and end users and decrease liquidity in the market.

We provide additional comments to those questions linked to the points above, namely questions 4 to 6. Please do not hesitate to contact us if you have questions about our response or require any further information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Matt Holmes'.

Matt Holmes  
Head of Regulatory Policy



## Response to the relevant questions:

Q4. Do you think that the membership requirement should be deleted where the market making activity in relation to exchange traded instruments is carried out OTC as well as on a trading venue? Please explain.

Yes, the membership requirement should be deleted where the market making activity in relation to exchange traded instruments is carried out OTC as well as on a trading venue. The objective for providing the exemption applies as much to market makers in financial instruments which are traded OTC as to those traded on a trading venue.

If market makers in OTC instruments are not able to qualify for the exemption this will adversely affect market liquidity and efficiency to the detriment of end users of those markets. For example, a market maker in OTC equity derivatives may need to hedge their market making positions in these products by trading in the underlying equities. If they are subject to all the requirements of the SSR, in particular the requirement to obtain the necessary 'locate' and other confirmations before they conduct a short sale in an equity, they will face extra barriers and costs to conducting their market making operations.

Given the current divergence of approaches adopted by NCAs in relation to compliance with the membership requirement, the removal of this requirement would enhance, clarify and foster convergence in the implementation of the exemption for market making activities.

Q5. Do you have proposals in relation to the improvement of the transparency of market making activities conducted OTC and exempted under the SSR? Do you think that requiring a firm willing to benefit from the exemption for its market making activities conducted OTC to qualify as systematic internaliser is a viable option that would improve the transparency of their activity? Please provide justification.

We do not believe the proposal to link the market making exemption under the SSR to the SI regime under MiFID II is viable or desirable. Firms should not be prohibited from using the market making exemption on the basis that they do not meet the SI criteria set out in MiFID II.

MiFID II sets out clearly defined thresholds for becoming an SI based on trading volumes in respect of 'frequent and systematic' and 'substantial'. An entity may be a market maker but may not qualify as an SI due to the criteria and trading volumes. This could disqualify several participants from availing themselves of the market making exemption.

Q6. Do you think it would be appropriate to enlarge the set of financial instruments eligible for the exemption for market making activities? If so, which financial instrument(s) would you suggest? Please provide justifications.

Yes, we agree that it is appropriate to enlarge the set of financial instruments eligible for the exemption for market making activities. The rationale for having a market maker exemption also applies to financial instruments other than equities, sovereign debt and equity/sovereign debt derivatives. For example, it is a common strategy for market makers in corporate bonds to hedge their market making risks by trading in the relevant sovereign debt: this not only hedges against changes in sovereign credit risk embedded in the corporate bond but also the general level of interest rates in the economy. It is therefore a necessary and legitimate part of the market making activity. Without the exemption, the market maker would need to meet all the conditions for undertaking a short sale in sovereign debt which would impair the market



making function, increase costs to the market maker and end users and decrease liquidity in the market.

Rather than stipulating an exhaustive list, we support the industry's suggestion to make the exemption available to financial instruments as defined in MiFID II/MiFIR.