



LSEG Response to ESMA Consultation on the evaluation of certain elements of the Short Selling Regulation

Introduction

LSEG is delighted to respond to ESMA's consultation on the evaluation of certain elements of the Short Selling Regulation. We support the aims of the SSR to improve market transparency, stability and the integrity of markets. For this reason we believe that it would make sense to align the MiFID and SSR definitions of Market Making and that the requirement for Market Makers to be members of a trading venue or SI to retain their exemption should be maintained. Please find below our detailed response to the consultation questions.

Our key points:

1. **It would make sense to align the MiFID and SSR definitions of Market Making** as both regulations aim to increase market transparency
2. **The requirement for Market Makers to be members of a trading venue or SI to retain their exemption should be maintained** – in the interest of promoting transparency
3. **We recommend a future review of the thresholds** to indicate market maker classification indicated under ESMA guidelines, to ensure that these are consistent across regulations where appropriate.

Consultation Questions

Part 1 - Exemption for market making activities

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?

LSEG Response: In our opinion the definition of Market Maker in the SSR (Art. 2(1)(K)) should be aligned to MIFID II Market Maker definition (Art. 4(1)(7)), which specifies better the membership requirements. We believe the objectives of both regulations, MIFID II and SSR, both cover transparency, stability and integrity of markets to protect investors.

Q2: Considering the new regulatory framework under the MiFID II/MiFIR, how do you suggest addressing the issue of the membership requirement in relation to those instruments that will remain pure OTC instruments despite the MiFID II/MiFIR framework? Should the membership requirement not apply to those pure OTC instruments? Please provide justifications.



LSEG Response: For OTC only instruments we agree with ESMA that there is no need to introduce any membership requirements. For transparency reasons, a public register could be provided

Q3: Where market making activities on exchange-traded instruments are carried out OTC only, should they be able to benefit from the exemptions? Do you consider that the application of the exemptions in those cases can be detrimental to the interest of investor and consumers? Please provide justifications.

LSEG Response: We recommend maintaining the membership requirements for exchange traded instruments irrespective of whether the activity of market making is carried out on or outside a trading venue, considering that one of the advantages of the membership requirement is that it involves an extra layer of checks on the activity of the market maker (i.e. the checks performed by the trading venues on its members.)

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.

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 justifications.

LSEG Response: We agree with ESMA that market markers conducting trading activity outside of a trading venue should be required to be systematic internalisers, in the interest of increasing market transparency, consistent with the objectives of EMIR and MiFID II / R and in particular with the article 23 of MIFIR (trading obligation)

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.

LSEG Response: We agree with the ESMA view to re-analyse the scope of the financial instruments eligible for the market making exemption. In our opinion the exemption should be applicable to instruments that market makers deem correlated, to allow for appropriate hedging activities.



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.

No LSEG view

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.

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.

LSEG Response: We agree with the ESMA view to simplify the notification procedures. We suggest to cancel the 30 day period mentioned in Article 17(5) of the SSR and to consider Market Makers exempted starting from the go-live date of the market making activity.

Part 2 -Short term restrictions on short selling in case of a significant decline in prices: Article 23 of SSR

Q10: What are your views on the proposal to change the procedure to adopt short term bans under Article 23 of the SSR? Please elaborate.

No LSEG view

Q11: What are your views on the proposal to change the scope of short term bans under Article 23 of the SSR? Please elaborate.

No LSEG view



Part 3 - Transparency of net short positions and reporting requirements

Q12: Do you see any reasons to change the current levels of the thresholds regarding the notification to competent authorities and the public disclosure of significant net short positions in shares? Please elaborate.

LSEG Response: We see no reasons to change the thresholds, which work well.

Q13: Do you see benefits in the introduction of a new requirement to publish anonymised aggregated net short positions by issuer on a regular basis? Can you provide a quantification of the benefit of such new requirement to your activity? Please elaborate.

No LSEG view

Q14: Do you agree that the notification time should be kept at no later than 15:30 on the following trading day? If not, please explain.

No LSEG view

Q15: Do you agree that the publication time should be changed at no later than 17:30 on the following trading day? Please elaborate.

No LSEG view

Q16: What are your views on a centralised notification and publication system at Union level? Can you provide a quantification of the benefit of such centralised notification to your activity? What are your views on levying a fee on position holders to have access to and report through such a centralised system? Please elaborate.

Q17: Which other amendments, if any, would you suggest to make the notification less burdensome?

No LSEG view

Q18: Do you agree that the identification code of the position holder should be the LEI and that such code should be mandatory for legal entities? Please elaborate.

LSEG Response: We support ESMA's recommendation to use the LEI code where available. The LEI is an internationally established code for financial market promoted by the FSB and brings SSR into line with MiFIR transaction reporting and EMIR trade reporting.

Q19: What are your views on the method that should be favoured, the nominal method or the duration-adjusted method as described above? In the latter case, do you think that the thresholds should be changed? Please elaborate.

No LSEG view