

15 March 2013

Submitted via ESMA Website

Dear Sir

Call for evidence
On the evaluation of the Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps

The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around €5 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. The IMA's authoritative Asset Management Survey 2012 recorded that IMA member firms were managing 38% of the domestic equity market for clients.

In addition to answering the questions asked in the paper, set out in Appendix I, I have identified the following key issues, with which we have particular concerns:

- The major operational difficulty firms have identified is with the lack of harmonisation on reporting to the national competent authorities ("NCAs"):
 - It can be difficult to find out how to register with some NCAs;
 - Not only are there multiple reporting channels, but there are also numerous differences in terms of the format of reporting;
 - With the disclosure thresholds as they currently stand, this creates a significant operational complexity for firms and introduces a degree of operational risk for NCAs as the reporting formats may not be readily comparable;
 - ESMA could help in this by providing a page with links to all the NCA registration pages, and ensuring that they are consistent. Even better would be if ESMA could provide one centralised registration and disclosure portal for all jurisdictions;
 - This would conform to the objective of the short-selling regulation, to ensure that "obligations on private parties to notify and disclose net short positions relating to certain instruments and regarding uncovered short selling are applied in a uniform manner throughout the Union" [Recital 3 of the SSR].

- Lack of harmonisation has led to problems when short selling bans are imposed by individual NCAs:
 - Emergency bans which have been implemented have been poorly communicated. Some seem only to have been published half-way through the morning of the day concerned;
 - Ideally, there should be one single channel which market participants can monitor for emergency short selling bans, and any such ban should conform to a consistent structure;
 - ESMA can play a valuable role in terms of establishing a single channel through which information on bans is disseminated on a real-time basis, while developing a template of issues that should be addressed before a ban is put in place.
- We would strongly encourage ESMA to investigate and publish a report on the ways in which NCAs use the data they receive. This would demonstrate whether the thresholds and increments should be revised, to ensure that the information that NCAs receive is of real value.

The longer-term impacts of the SSR are not yet known:

- Whilst the current call for evidence is useful to communicate a number of the operational complexities associated with the introduction of the Regulation, the impact of the Regulation on markets cannot be accurately assessed on a data set of only four months;
- However, we understand from our members that the restrictions on holding sovereign CDS, and the associated uncertainty as to whether a position is eligible to be treated as covered, have caused some portfolio managers to avoid long positions in some European issuers. If this problem is widespread, one unintended consequence of the regulation will be an unwonted impact on funding for the real economy;
- The full impact will only be felt over a longer time-frame, so we would urge ESMA to keep the liquidity, and other, impacts of the Regulation under periodic review.

I would be happy to discuss the implications of the issues I have raised, whenever is convenient.

Yours sincerely



Adrian Hood
Regulatory Adviser
IMA

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Transparency and reporting requirements

Q1: Do you consider that the initial and incremental notification/publication thresholds for net short positions in shares and sovereign debt have been set at the correct levels? If not, what alternative thresholds would you suggest and why?

We consider that the thresholds are set at the correct level. They should certainly not be reduced.

Q2: What use are you currently making of information made available by competent authorities or the central website operated or supervised by the relevant competent authority on public disclosures of net short positions in shares?

While the UK regulator has made some effort to simplify and clarify the process of submitting notifications and disclosures, other national competent authorities ("NCAs") have been less clear about how submissions should be made.

We are not aware of any firms having made use of the published public disclosures of short positions held.

Q3: If you had taken short positions in shares and sovereign debt before the Regulation applied, what impact have the notification/disclosure requirements had on your trading behaviour since 1 November 2012?

We have heard anecdotally that the regulation has resulted in less short sales, especially in CfDs.

Q4: Do you have any comments on the method of calculating net short positions in shares and sovereign debt (e.g. the requirement to duration adjust cash positions in sovereign debt)?

The calculation of positions in sovereign debt are massively, and needlessly, complicated by the use of duration adjustment. Use of the nominal position would simply firms' calculations, and simplify their positions.

Q5: What is your view of the decision to adjust the monetary trigger thresholds for reportable short positions in sovereign debt every three months? Is there an alternative you would favour and if so please explain why?

We are content with the current process, provided the data remains readily available.

Should the triggers, in practice, be changing on a regular basis, then some, more stable, alternative may need to be sought.

Q6: Do you consider that reporting mechanisms are operating efficiently? If not, explain why and how they could be improved.

It can be difficult to find out how to register with some NCAs. ESMA could help in this by providing a page with links to all the NCA registration pages, and ensuring that they are consistent. Even better would be if ESMA could provide one centralised registration and disclosure portal for all jurisdictions.

Q7: Do you have any other comments on the reporting and transparency requirements or on their operation since 1 November 2012?

The amount of time and effort involved in identifying security attributions from index positions is disproportionate to the figures this results in and their subsequent relevance to the level of notifiable interest. In the experience of our members, they spend significantly more time on this particular sub-task than they do for the rest of the process in its entirety. Some element of proportionality should be applied, with, possibly, a de minimis provision.

As an example, some firms report spending an hour each day calculating their index positions, which only very occasionally result in affecting their disclosable position by 0.01%.

This can also result in otherwise unnecessary expense: some indices, such as DAX, charge a great deal of money per year to have access to their index weightings on Bloomberg.

Restrictions on short selling of shares and sovereign debt

Q8: Have you observed any improvements in settlement performance (either your own or that of counterparties) since the Regulation became applicable?

We have received a couple of anecdotal reports of a short term improvement, but consider that the major exchanges would be better placed to comment on this.

Q9: Have you noticed any impact on the cost or availability of securities lending since the Regulation has applied? Please specify any effect you have seen.

None of our members have been able to identify any significant change in market behaviour since the introduction of the regulation.

Q10: Have you observed any improvements in reducing the risks of volatility, downward spirals or settlement problems (e.g. inflation of shares) since the Regulation became applicable?

Other than the possible improvement in settlement (Q8), none of our members were able to identify any other improvements.

Q11: Has the locate rule requirement affected the way you conduct short selling?

The only reported change has been one firm which has revisited its procedures on this area and taken steps to improve communication across the investment team.

Q12: Has the definition of 'third party' in the implementing technical standards limited or constrained the operation of the locate confirmation or other arrangements? If so, please specify in what ways.

No comment

Q13: Are there any changes which could be made to the conditions for entering into a short sale which would improve the efficiency of the arrangements without undermining the purpose of the measures? Please explain any changes you would propose.

No comment

Q14: Do you have any other comments on the existing restrictions or their operation since 1 November 2012?

No comment

Restrictions on entering into uncovered sovereign credit default swap positions

Q15: Have you noticed any effect of the prohibition on entering into an uncovered sovereign CDS transaction on the price and on the volatility of the sovereign debt instruments?

Our members report that the prohibition has affected the market by significantly reducing trading in sovereign CDS. This has resulted in there being limited liquidity, so the levels of trading are less reflective of the market risk. This can have the unintended consequence of opening up unintended basis opportunities in the underlying securities.

Q16: Have any elements of the prohibition on entering into an uncovered sovereign CDS transaction had a noticeable effect on your ability to hedge your exposures? If yes, please quantify the impact and explain where the issue arises.

Some members have reported that, as the restriction applies only to EU names, they are more likely to trade the physicals as opposed to hedging the credit component of existing positions.

Q17: Have the restrictions on entering into an uncovered sovereign CDS led you to use any alternative methods for hedging your exposures? If so, please elaborate.

We do not believe that there has been any such consequence.

Q18: Do you have any other comments on the requirements concerning uncovered sovereign CDS positions or on how they have operated since 1 November 2012?

No comment.

Settlement discipline including buy-in procedures

Q19: What is your assessment of the effect on settlement discipline in shares since the application of the Regulation?

No comment

Q20: What effect, if any, do you consider this provision of the Regulation has had on liquidity in shares since its application?

Our members have not observed any particular changes on liquidity in shares.

Q21: Do you have any other comments on the requirements of the Regulation concerning settlement discipline in shares or on how they have operated since 1 November 2012?

We think that it is taking some time for any benefits of the regulation to become apparent, but we hope to see continued improvements in settlement disciplines.

Exemptions

Q22: Does the current definition and scope of the exemption for market making activities allow sufficiently for liquidity provision?

No comment

Q23: Is the process for obtaining the exemption for market making activities appropriate for timely provision of liquidity in all circumstances?

No comment

Q24: Is the current unavailability of the exemption for market making activities in third country markets having any impact?

No comment

Q25: Do you have any other comments on the provisions of the Regulation concerning exemptions or on how they have operated since 1 November 2012?

No comment

Intervention powers and emergency measures

Q26: What is your assessment of the effect of temporary restrictions imposed by competent authorities on short selling since the application of the Regulation? Please explain

We are concerned that the emergency bans which have been implemented have been poorly communicated. Some seem only to have been published half-way through the morning of the day concerned.

Others have been supported by other NCAs also banning short sales of the same stock, but the details of the extent of their ban were different from the original, and then changed late in the day.

This has led to considerable confusion for firms trying to deal in these markets, and has probably damaged the markets in the companies concerned.

It is important that NCAs improve the manner in which they notify the markets of any future bans, and that any confusion is taken into account, should firms accidentally breach such an emergency ban through ignorance of its existence or scope.

Q27: In case of emergency bans,
a) is the information to be published according to Art. 25 of the Regulation sufficient?
b) If no, please explain what other/additional information should be provided when introducing an emergency measure.

NCAs should ensure that they only make use of these powers where they are, and can be demonstrated to be, necessary. When they do choose to make use of these powers, then they should ensure that the basic information about the ban is properly

disseminated. This should include translation into all necessary languages to enable all likely market users to be aware of the emergency ban.

Due to the, inevitable, short notice of these bans, the NCAs should make every effort to identify, in advance, how they are going to make sure that all relevant parties are notified of the ban in time.

Q28: Do you consider the current thresholds set to identify a significant intra-day fall in the price of financial instruments are appropriate for all instruments? If not, what different thresholds should be set and why?

The thresholds seem reasonable.

Q29: Do you consider thresholds should be set for significant price falls in UCITS and commodity derivatives? If so, how should they be set and at what levels?

Given that we do not see how a UCITS could be short-sold we see no need for a threshold to be set.

The authorised manager of a UCITS is required to determining the price of a unit in a UCITS fund by regularly valuing the scheme property so that unit holders know the market value of the financial instruments included in the portfolio (the Net Asset Value). Holders of units are able to sell them to the authorised fund manager directly, or in the market. Although the price of a unit of any UCITS may vary freely in the market, the price is subject to a rule which keeps the price close to the NAV of the UCITS. Consequently, the prices do not move away from the NAV and the interest of selling short those assets is negligible.

Q30: Do you have any other comments on the provisions of the Regulation concerning intervention powers and emergency measures or on how they have operated since 1 November 2012?

No comments