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European Securities and Markets Authority
11-13 Avenue de Friedland
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Dear Sirs,

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

ISDX welcomes the opportunity to respond to ESMA's Call for Evidence concerning the Short Selling Regulation (Regulation (EU) 236/2012).

ISDX is a market operator based in the UK which operates a Regulated Market and MTF segments for trading shares together with a limited number of equity-like instruments. We also operate an SME market (MTF) with the securities of approximately 130 small and mid cap companies admitted to trading on the ISDX Growth Market.

Our response is limited to Question 28 which relates to the emergency powers of competent authorities to prohibit or restrict short selling of financial instruments temporarily in the case of significant fall in price. As a market operator, our experience is that trading in securities of small and mid cap companies is typically episodic. These securities may not trade on a daily basis and as such the current thresholds for identifying a significant intra-day fall (as prescribed in delegated regulation (EU) No 919/2012 of 5 July 2012) are not appropriate for these markets. We therefore urge ESMA to recalibrate the thresholds so that they better reflect the dynamics of trading in small and mid cap securities.

Please get in touch if we can expand on our response.

Yours Sincerely,

James Godwin
Director of Regulation

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 to identify a significant intra-day fall in the price of financial instruments are prescribed for liquid shares in Article 23 of the Short Selling Regulation and for other, non-liquid shares in delegated regulation (EU) No 919/2012 of 5 July 2012.

In our view, the thresholds prescribed in the delegated regulation do not adequately reflect the trading patterns that are typically seen in the securities of small and mid cap companies. In this type of market, trading is episodic and some instruments may not trade on a daily basis. As such, a fall in the price of a size that is stipulated in the delegated regulation may not be indicative of a disorderly market, but rather a reflection of the frequency with which the instrument trades and the liquidity that is available. This is a feature of small cap stocks that trade on SME markets, such as the ISDX Growth Market.

We therefore recommend that ESMA takes the opportunity to review whether these thresholds are appropriate for small and mid-cap securities where trading is episodic as the current thresholds could give a misleading impression about the orderliness of that market.

In addition we query whether it is appropriate or necessary for competent authorities to exercise the power under Article 23 of the Short Selling Regulation to prohibit or restrict short selling with respect to financial instruments traded on an SME Growth Market (the new category of trading venue proposed to be introduced through MiFID II). It is difficult to conceive a set of circumstances in which a significant decline in securities admitted to trading on SME Growth Markets is likely in itself to threaten financial stability and market confidence. To provide this power to competent authorities therefore seems an unnecessary regulatory burden and runs counter to the principles of better regulation to which the European Commission and Council are committed. We would therefore encourage ESMA, in developing its advice to the Commission, to consider whether it is indeed necessary or appropriate for competent authorities to have powers under Article 23 of the Short Selling Regulation in relation to small and mid cap securities and / or financial instruments admitted to trading on an SME Growth Market.