



The International Securities Lending Association

4 Lombard Street
London EC3V 9AA

European Securities and Markets Authority
CS 60747
103 rue de Genelle
75345 Paris Cedex 07
France

Dear Sir,

ESMA call for evidence on the evaluation of the Regulation (EU) 236/2012 of the European Parliament and the Council on Short Selling and certain aspects of Credit Default Swaps

On behalf of our members, we appreciate the opportunity to contribute to ESMA's call for evidence. We welcome the opportunity given to market practitioners to feedback on their experiences of the regulations to date. In general terms we would like to add our support to the response provided jointly by AFME and ISDA, with whom we share common membership. In addition, as the industry body representing securities lending activity we would like to make some further comments on question 9 which contemplates the regulation's impact on securities lending activity.

The International Securities Lending Association (ISLA) is a trade association established in 1989 to represent the common interests of participants in the securities lending industry. It has approximately 100 full and associate members comprising insurance companies, pension funds, asset managers, banks, securities dealers and service providers representing more than 4,000 clients. While based in London, ISLA represents members from more than sixteen countries in Europe, and the rest of the world. For more information please visit the ISLA website www.isla.co.uk

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.

There has been little impact on the cost or availability of securities lending since the regulation was first implemented. The level of short sale activity has been low and lenders have been able to manage the numbers of locates and holds that have been required without impact. However, the change to the market making exemption, which will be implemented in May 2013, is likely to significantly increase the volume of pre-locates and it is unclear how the market will manage this increased pressure.

It would be helpful in alleviating some of these pressures if borrowers could accept locates from internal lending desks rather than seek a third party. Whilst shares may be borrowed from internal desks, the locate must be from a different legal entity which increases the volume of locates in the market unnecessarily (and which in turn negatively affects liquidity). The policy objective of requiring locates to be made through separate legal entities has never been clear to us, and bearing in mind the requirement for firms to



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maintain adequate records of activity, (which include a requirement to show that securities have been adequately located where necessary), we would strongly suggest that the regulation be amended to allow lending and repo desks within the same legal entity to be used for locating securities.

In determining liquidity we believe that there should be reference to securities lending market data. However we understand from discussions during the consultation process that ESMA is not comfortable relying on private sector data. With the development of increased regulatory transparency we believe that it may be feasible in the future to illustrate liquidity in securities lending more accurately and therefore develop a definition of liquid shares which is more appropriate and relevant to securities lending than is currently described in Article 6. Until this transparency is determined, it is difficult to propose an acceptable alternative objective definition.

Given that there has been no opportunity to assess the impact that the market making exemption will have on the cost and availability of securities lending, and the opportunities that improved regulatory transparency may enable the development of a more appropriate definition of liquidity, we would like to request that ESMA provide a formal opportunity to consider this matter at a later time.

We hope you find these comments constructive and we remain fully at your disposal for further engagement and correspondence.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Kevin McNulty', with a long horizontal stroke extending to the right.

Kevin McNulty

Chief Executive