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

FINANCE DENMARK

Memo

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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?

Due to the scope and application of the MiFID II, definition of market maker still awaits clarification and we expect different application of the market maker definition within MiFID II scope (e.g. regarding market maker on venue and off venue), at this point in time we do not support such alignment. Absence of alignment is also due to the fact that the rules in the SSR and MiFID II serve different purposes.

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.

The membership requirement should not be retained. Reference is made to the justifications contained in the Guidelines compliance table (ESMA/2013/765).

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.

The membership requirement should not be retained. Reference is made to the justifications contained in the Guidelines compliance table (ESMA/2013/765).

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.

We support an extension of the scope of financial instruments eligible for the exemption and agree that corporate bonds, convertible bonds, subscription rights and dividend swaps should be included in the list.

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.

We support that market makers should be able to notify the list of financial instruments by using indices to ease the administrative burden on both NCAs and market makers seeking exemption.

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.

In connection with publication of adopted bans it is important to ensure transparency and easy access for firms via a central database to such information (cf. point 118). See also our response to Q 16.

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.

We support a standardised and centralised notification and publication system across the EU; as such a system in general would ease the burden and costs for both reporting firms and the NCAs.

With the diversity of NCA reporting conducts and formats, which exist across the Union today, reporting firms use a lot of resources to set up reporting connections and to adapt to the various and widely different reporting formats required by each NCA in EU. A standardised system would also help to alleviate the risk of incorrect reporting and errors.

We also see a benefit for NCAs, as the costs and maintenance of one centralised system most likely would be less than the total costs and maintenance used today on preserving the different systems, which exist across the Union.

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

Today some NCAs require separate reporting formats and conducts respectively for notification and publication of short selling positions. Other NCAs have taken the approach to require one format regardless of notification or publication.

In this regard, we find it unnecessarily burdensome that some NCAs require separate formats and conducts for notification and publishing of short selling positions, whereas others do not.

We support the approach taken by some NCAs where notification and publication are done in the same way, and where short selling positions crossing the publication threshold automatically are published by the NCA. This approach will save reporting firms and NCAs resources and costs, and help avoid the risk of incorrect reporting.

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.

We support that the identification code of the position holder should be the LEI, as a standardised identification of position holders will simplify reporting and make it easier for NCAs across the Union to identify position holders.