THE
INVESTMENT
ASSOCIATION
INVESTMENT MATTERS

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Dear Sir or Madam

RE: Consultation Paper on the evaluation of certain elements of the Short Selling Regulation

The Investment Association is delighted to provide input to your consultation.

We recognise that this Regulation is important for the financial services industry. We would look to work with ESMA in determining how any future decisions by them affect markets and firms.

Yours faithfully

Adrian Hood

Regulatory and Financial Crime Expert

ANNEX I
RESPONSES TO QUESTIONS

ABOUT THE INVESTMENT ASSOCIATION

The Investment Association is the trade body that represents UK investment managers, whose 200 members collectively manage over £5.7 trillion on behalf of clients.

Our purpose is to ensure investment managers are in the best possible position to:

- Build people's resilience to financial adversity
- Help people achieve their financial aspirations
- Enable people to maintain a decent standard of living as they grow older
- Contribute to economic growth through the efficient allocation of capital

The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks & shares ISAs.

The UK is the second largest investment management centre in the world and manages 37% of European assets.

More information can be viewed on our website.

Questions 1-9: No comment

CHAPTER 3.3.1: PROPOSAL TO MODIFY THE PROCEDURE FOR COMPETENT AUTHORITIES TO ADOPT A SHORT TERM BAN ON SHORT SELLING UNDER ARTICLE 23 OF THE SSR

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

We are not convinced that national competent authorities should be give the power to impose EU wide bans, with no prior oversight or concurrence from ESMA. We are not aware of any mischief that this change would prevent.

CHAPTER 3.3.2: FURTHER CONSIDERATIONS ON THE SHORT TERM BAN UNDER ARTICLE 23 OF THE SSR

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

We strongly disagree with the proposal to broaden the scope of Article 23 short sale bans to include OTC trading and derivatives.

We have seen no evidence that OTC trading or derivatives contribute to share price falls, increase volatility or damage liquidity in markets. OTC trading enables market participants to find counterparties and supports liquidity in periods of stress and volatility. In relation to OTC derivatives, market participants often rely on these instruments to hedge risks for which there is no close match available on-exchange, and to satisfy hedge accounting standards.

However, we do see value in restricting the scope of any short-term measures to shares traded on a trading venue.

CHAPTER 4.3.1: NOTIFICATION TO COMPETENT AUTHORITIES AND PUBLIC DISCLOSURE OF SIGNIFICANT NET SHORT POSITIONS IN SHARES

12. 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.

We see no reason to change the current threshold levels.

13. 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 comment

CHAPTER 4.3.2 METHOD OF NOTIFICATION AND DISCLOSURE

14. 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.

The deadline for notification should be moved back from 3:30pm, to 4:30pm or later, due to the fact that most large firms have systems which run overnight to generate the data and any issues can cause significant challenges to meet the current deadline.

Creating some way of allowing for exceptional extenuating circumstances for being late by a reasonable amount of time would allow the regulations to maintain the normal deadline at 3:30pm.

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

If the publication time is pushed back this could still allow firms to have time to perform the necessary checks (say if firms submitted at 4:15pm).

In no way should the deadline be considered to be changed to a time earlier in the day than 3:30pm.

16. 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 are very much in favour of having a centralized reporting tool. We believe that the competent authorities will actually prefer this in the long run, when they are no longer required to support the systems they have previously built. Further a centralised system could be responsible for publication on behalf of the regulators and thus reduce their overheads.

As this is a regulation and not a directive we would support further harmonisation of the disclosure process as all log-ins, submissions, forms, etc. differ quite dramatically across jurisdictions.

We would have concerns about charging fees to notifying parties. The ongoing running costs of a central system, if appropriately designed, should be significantly lower than the sum of the costs incurred by separate national competent authorities, each managing their own processes. The upfront costs of moving to a central system could be funded by amortisation of the savings incurred by national competent authorities who migrate to the new system.

If such a fee for disclosures is to be imposed, this should be a minimal subscription-based fee rather than a charge per disclosure.

Quantification of benefit of notification on a central system:

- Time – expected savings of 0.1 FTE per firm
- Automation through xml feeds – expected savings of 0.25 FTE per firm
- Reduction in errors – reduction of risk of receiving regulatory fines

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

Now all forms appear to require, at a maximum, the same number of data points as indicated on the ESMA form. As noted previously, the submission method is the primary differentiation across jurisdictions, which causes challenges. One particular challenge is the separate notification obligation in Germany in the BaFIN portal and in the Federal Gazette, which duplicates effort. This imposes an additional obligation, beyond the base regulation, as this puts the obligation on the disclosing party rather than on the regulator.

One advantage across all disclosure portals would be to show the prior notification details when making a subsequent disclosure to further ensure accuracy. A consistent disclosure obligation method is definitely preferred.

18. 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 do not have a concern between using LEI or BIC, although implementation of LEI would entail some time and cost.

CHAPTER 4.3.3: NOTIFICATION TO COMPETENT AUTHORITIES OF SIGNIFICANT NET SHORT POSITIONS IN SOVEREIGN DEBT

19. 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.

We see no need for any change to the current methods.