

## EFAMA's REPLY TO ESMA's Consultation on the Review of Certain Aspects of the Short Selling Regulation

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EFAMA welcomes this opportunity to comment on the review of the provisions within the Short Selling Regulation. We have limited our responses to those questions of most relevance to our membership.

### Q2: What are your views on the proposed clarifications?

A clear and harmonised guide with relevant references to the MiFID II text, including the definition of the RCA for the purpose of adoption of emergency measures and the shares and/or the financial instruments subject to the ban would be greatly welcome. This should come ideally with the certainty of being able to hedge market exposure through short derivatives representing suitable benchmarks for the relevant market.

### Q3: Do you agree with the proposed clarification?

We agree with this clarification and would further welcome clarification on who is the owner of the ban. Historically the RCA would release this, though ESMA did not systematically publicise this information. It would be useful to have a single register to check all bans, without having to consult every RCA.

### Q4: What are your views regarding the exclusion or, alternatively, a percentage-based weighting approach, for indices, baskets and ETFs in the context of long – term bans?

We support an outright exclusion of indices, baskets and ETFs from the scope of both long- and short-term bans.

It is quite common for UCITS and UCITS like funds to be hedged by acquiring short derivatives on indices representing suitable benchmarks for the relevant markets. In the event of market turmoil, asset managers must be able to increase hedging strategies for portfolio exposed on banned shares/market, as well as to efficiently manage redemptions from investors even if this could technically involve the creation or the increase of a NSP.

From a practical point of view, the simplest way to avoid banning the shorting of an index, if it has only one or more banned shares, is an outright exclusion of those instruments, rather than using a percentage-based weighting approach requiring asset managers to obtain the exact composition of licensed indices, very often coming with heavy license fees. We would also welcome the removal of the disclosure obligation for these instruments for the same reason. The disclosures are difficult to

implement and costly, due to the sourcing of the components of licensed indices while these do not add particular value to the global market picture since the securing of large net short exposures via indexes is not an economical way to short a given issuer.

**Q8: What are your views on ESMA's proposal to include subscription rights in the calculation of NSPs in shares?**

We believe that including subscription rights in the calculation of NSP shares adds a layer of complexity without any tangible benefit.

In any event, should the proposal to include subscription rights in the calculation of NSPs shares be taken up, it should be clarified whether the issued share capital should also be increased to include subscription rights. Without changing the issued share capital, the numerator and denominator are not consistent and a notified NSP could be higher than the real one if the short leg of the position (subscriptions rights) is not offset by a long one (shares). It should also be clarified whether the change in methodology is limited to the subscriptions rights or will also include other instruments related to unissued shares, such as convertible bonds.

**Q14: Would you modify the threshold for the public disclosure of significant NSPs in shares? If yes, at which level would you set it out? Please justify your answer, if possible, with quantitative data.**

We see no need to change the actual threshold for the public disclosure, though more harmonization across RCAs would be welcome.

**Q15: Would you agree with the publication of anonymised aggregated NSPs by issuer on a regular basis? If yes, which would be the adequate periodicity for that publication?**

We see merit in publishing anonymised aggregated NSP by issuer on a regular basis.

However, this should not penalize market participants: it is essential to provide for an adequate time lag in the publication to avoid a possible herding effect and copy-cat strategy that might exacerbates the negative impact on price of short selling.

**Q16: Have you detected problems in the identification of the issued share capital to fulfil the SSR notification/publication obligations? If yes, please describe and indicate how would you solve those issues.**

As the ESMA consultation recognizes, the source used to identify the issued share capital, the denominator in the net short position calculation, is not always up to date, especially in case of corporate actions. The issued share capital therefore usually has to be checked between different data sources (including with the information made available on the issuer's website) to avoid calculation errors. This is costly and time-consuming.

This lack of a single reliable source creates additional administrative burdens and costs for position holders and potentially misleading or inaccurate notification on NSP.

The identification of the “issued share capital” should be based on an accurate, timely and reliable source. A central EU repository of issuer information could be the best solution for finding relevant information in a centralised and standardised manner and in a machine-readable format.

**Q17: Do you agree with the establishment of a centralised notification and publication system for natural and legal persons to communicate their NSPs? In your view, which would be the benefits or shortcomings this system would bring? Please explain.**

Although a full assessment of the proposal would require knowing the full details, we believe that the establishment of a single pan-European approach may have more benefits than shortcomings.

It would improve the reporting mechanism and reduce unnecessary operational difficulties for position holders that are active on shares across several countries, even if they are already registered in the reporting system of different Member States. Currently, we are faced with different processes, some via web portal, others via email, with different authentication requirements.

In addition, with the reduction of the new reporting threshold (from 0,2% to 0,1%) there will be an increase on the number of notifications and the use of a centralised system may make the notification less burdensome (for example with automated reporting system). An EU repository on NPSs may further benefit all investors and ultimately the European market itself by enabling them to access all the information in a centralised and standardised manner.



## About EFAMA

EFAMA is the voice of the European investment management industry, which manages over EUR 27 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities.

EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the authoritative EFAMA Fact Book.

More information is available at [www.efama.org](http://www.efama.org).

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