

## **SSMA response to ESMA consultation on Short Selling**

### **General Comments**

Swedish Securities Markets Association - SSMA - welcomes the opportunity to respond to this consultation on short selling.

SSMA is of the strong opinion that short selling and access to stock loans is very important for a well functioning market and market liquidity. To be able to short shares plays an important role in the price discovery process and improves the price formation since it makes it possible to reflect all market participants views on company valuations. This is especially vital in stressed market conditions where all actors contribute to liquidity. Any restrictions on the market will therefore limit the function of price discovery and harm liquidity and thereby increase risk and volatility. SSMA therefore believes short selling bans does not fulfil its purpose and should not be introduced.

The main problem in this area is “naked” short selling where investors short shares without having secured access to stock lending. This creates settlement and delivery problems, which leads to higher risks and costs. This is already regulated and higher efforts to enforce those rules should be made.

The other problematic situation is when short sellers are called on their stock loans and there are no other sources to borrow shares. This can create a “short squeeze” and potentially contribute to market volatility. This is solved by increasing access to larger pools of assets. One of the most important improvements for the overall market structure would therefore be to secure that more asset managers are willing to lend their shares.

**Q1: Does ESMA’s analysis confirm the observation that you made in your perimeter of competency? Please provide data to support your views.**

SSMA members main activities are in countries where no short selling bans were introduced during the Covid-19 crisis. However we have experience from the bans that were introduced during the financial crisis. In short we are of the opinion that short selling bans are not effective tools to use in a crisis situation. Markets function better without bans and there is no evidence that bans work as they are intended to do i.e stabilize market volatility.

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

SSMA has no strong view, but do not think bans are effective.

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

SSMA agrees.

**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?**

SSMA believes it is good to exclude these instruments. It would add unnecessary complexity to include them.

**Q5: Do you agree with the proposed alignment of the conditions to adopt measures under Article 20 and Article 28 of SSR?**

SSMA supports the amendments.

**Q6: do you agree with the proposed amendments to Article 24 of Delegated Regulation 918/2012?**

SSMA agrees.

**Q7: Do you agree with the proposed amendments to the SSR and, more specifically, the mediation procedure under Article 23 of SSR?**

SSMA sees some merit in amending this procedure. Since we do not think bans are effective it is very important that changes do not create quick introduction of bans with unforeseen consequences. If this is amended as suggested it will be very important that instruments listed in Q4 are excluded to minimize spreading effects.

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

SSMA supports inclusion of subscription rights in the calculation of NSP.

**Q9: Do you agree with this proposal to reinforce the third-party's commitment? If not, please elaborate. If yes, would you either (A) keep the three types of locate arrangements, but increase the level of commitment of the third party to a firm commitment for all types of arrangements, or (B) simplify the regime to keep only one type of firm locate arrangement?**

SSMA does not agree since it will increase requirements on clients to secure delivery. It is better to enforce existing rules to secure stock lending before shorting a share. The

main problem in this area is naked short selling, which should be prohibited. To further introduce new rules could have a negative effect on liquidity. These new requirements would mean that third-party must put similar commitment on their source. This would limit the number of investors acting as lenders due to the administrative burden. Our experience is that short squeezes are not caused by failure to deliver when the short positions are established, but when borrowed shares are called back by the lender.

Most liquid stocks are actually “easy to borrow”, and the current market practice for such stocks are working as intended.

**Q10: Do you agree with this introducing a five-year-long record-keeping obligation for locate arrangements? If not, please justify your answer.**

SSMA believes this would introduce a new type of record keeping and does not see the benefit. It would introduce new technical requirements for the Investment Firms. It would make it more costly to utilize short selling as an investment tool. Especially smaller investors would have to stop using short selling resulting in a less efficient market. This effect would be the largest in less liquid stocks and markets.

**Q11: Do you agree with reinforcing and harmonising sanctions for “naked short selling” along the proposed lines? If not, please justify your answer.**

SSMA thinks harmonisation is good and therefore agrees. It is important that “naked short selling” is prohibited.

**Q12: Do you consider that shares with only 40% of their turnover traded in a EU trading venue should remain subject to the full set of SSR obligations?**

SSMA does not see a need to change the percentage.

**Q13: Do you consider that NCAs should take any other qualitative but specific parameter into account in the identification of the list of shares that should not be exempted from the SSR obligations despite being more heavily traded in a third-country venue? If yes, please elaborate**

SSMA do not think other parameters should be taken into account.

**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.**

Apart from “naked short selling” the main problem for the market is when stock loans are called and risk creating a short squeeze. SSMA believes public disclosure increases this risk. Too much transparency in this area could create speculation. We therefore

believe a higher threshold should be introduced. SSMA want to highlight the difference between long and short positions. NSPs are disclosed at 0,5% whereas long positions at 5%. We are of the opinion that the public disclosure threshold should be increased to at least 1%.

**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?**

SSMA agrees to this aggregated anonymised publication of NSPs above the threshold. This is important market information and think it should be published daily. When considering doing a short sale it would be relevant information. The higher the aggregated NSPs, the more likely a short squeeze would be.

**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.**

SSMA has not seen any general problems with this. There could be some difficulties around different events such as issuance of new shares and when companies de-register shares they have bought back. SSMA believes the primary exchanges for clarity should make total number of shares public and easily accessible.

**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.**

SSMA agrees and supports a centralised system and believes transparency is good. We believe it is best if the local NCAs continue to get these reports and then aggregate the local reports on EU level. Centralisation would be a large benefit for pan European investors trading many local markets.