



European Securities and
Markets Authority

Response Form to the Consultation Paper on the review of certain aspects of the Short Selling Regulation





Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **19 November 2021**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA_QUESTION_SSRR_1>. **Your response to each question has to be framed by the two tags corresponding to the question.**
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA_SSRR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SSRR_ABCD_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open Consultations" -> Consultation Paper on Review of MAR Guidelines on delay in the disclosure of inside information and interactions with prudential supervision").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).



Who should read this paper

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to issuers of financial instruments admitted to trading or traded on a trading venue, investment firms, market makers, primary dealers, persons who engage in short sales or transactions resulting in net short positions. Responses are also sought from any other market participant including trade associations and industry bodies, institutional and retail investors, consultants and academics.



General information about respondent

Name of the company / organisation	The International Securities Lending Association
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

Please make your introductory comments below, if any.

<ESMA_QUESTION_SSRR_0>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SSRR_0>

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

<ESMA_QUESTION_SSRR_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SSRR_1>

Q2 What are your views on the proposed clarifications?

<ESMA_QUESTION_SSRR_2>

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<ESMA_QUESTION_SSRR_2>

Q3 Do you agree with the proposed clarification?

<ESMA_QUESTION_SSRR_3>

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<ESMA_QUESTION_SSRR_3>

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?

<ESMA_QUESTION_SSRR_4>

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<ESMA_QUESTION_SSRR_4>

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

<ESMA_QUESTION_SSRR_5>

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<ESMA_QUESTION_SSRR_5>

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

<ESMA_QUESTION_SSRR_6>

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<ESMA_QUESTION_SSRR_6>

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

<ESMA_QUESTION_SSRR_7>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SSRR_7>

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

<ESMA_QUESTION_SSRR_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SSRR_8>

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?

<ESMA_QUESTION_SSRR_9>

Members of the International Securities Lending Association (ISLA) strongly disagree with ESMA's proposal to reinforce third party commitments for locate requirements and firmly believe that the existing rules are sufficient.

The core reason for the review of these rules is cited as the activity around so called 'meme' stock trading that was observed in the United States, earlier in 2021. This activity was not mimicked across Europe, leading ISLA to assume that Europe already has sufficient controls in place to prevent this type of activity. Anti-collusive regulation in Europe is generally more rigorous than in the US, for example the Market Abuse Regulation (MAR), applies to all EU listed financial instruments, that retail investors who give or receive trading advice, must abide by. This alone makes it harder for retail investors in Europe to unite and undermine the short selling strategy of a hedge fund, which was a key driver for the incident that occurred.

On the 18th of October the SEC released a [report](#) examining the high volatility surrounding the security GameStop and proposed no significant policy changes as a result, indicating that the market functioned as it should, with the relevant controls in place at present, and indeed made the point that the situation was not in their view caused by abusive short selling activity.

ISLA considers that the recent and upcoming regulatory changes brought in by SFTR and CSDR respectively enhance both visibility of the build-up of borrowed positions, in the case of SFTR, and



incentives to ensure efficient settlement of deliveries in the case of CSDR. ISLA considers that these changes, and the benefits they bring, should be allowed to fully bed in before any further measures in this area are considered.

Finally, ISLA suggests that if there has been a significant ‘surge in trading by retail investors’ as cited in the ESMA [Trends, Risk & Vulnerabilities Report](#) issued in September 2021, then education by the regulator to those market players is also key. ESMA should look to further expand guidance to retail investors as a result so that they understand the associated risks.

To conclude, ISLA considers that the biggest concern to the membership base of a change in rules, is the possible impact to market liquidity and highlight that a potential consequence to the proposal in 190 (b) of the consultation paper, may indirectly impact smaller market participants. ISLA believe that changes to the current locate rules would result in an increased cost to cover, benefiting the larger market participants who have access to a greater pool of securities. The proposed rule changes to locates could curtail liquidity and damage borrowers’ abilities to fulfil other client orders well beyond shorting strategies with widespread consequences.

ISLA also believe that global alignment should be maintained between the rules outlined in the European Short Selling Regulation and RULE 203 of the SHO rules in the US.

<ESMA_QUESTION_SSRR_9>

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

<ESMA_QUESTION_SSRR_10>

ISLA agree to the introduction of a five-year long record keeping obligation for locate requirements and understand that this is already standard market practice across Europe. ISLA would however comment that any record keeping requirements prescribed by ESMA, are not too rigid in terms of format, in that they cause unnecessary additional operational burden to market participants.

ISLA does not propose any significant changes to Implementing Regulation 827/2012 that states evidence of locates must be ‘provided in a durable medium’, other than the length of time that evidence of existence of arrangements must be kept, aiding RCA’s supervision.

<ESMA_QUESTION_SSRR_10>

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

<ESMA_QUESTION_SSRR_11>

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<ESMA_QUESTION_SSRR_11>

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?

<ESMA_QUESTION_SSRR_12>

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<ESMA_QUESTION_SSRR_12>

Q13 Do you consider that NCAs should take any other qualitative but specific parameter into account in the identification of the shares subject to the full set of SSR obligations even if they are more heavily traded in a third-country venue? If yes, please elaborate

<ESMA_QUESTION_SSRR_13>
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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.

<ESMA_QUESTION_SSRR_14>
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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?

<ESMA_QUESTION_SSRR_15>
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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.

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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.

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