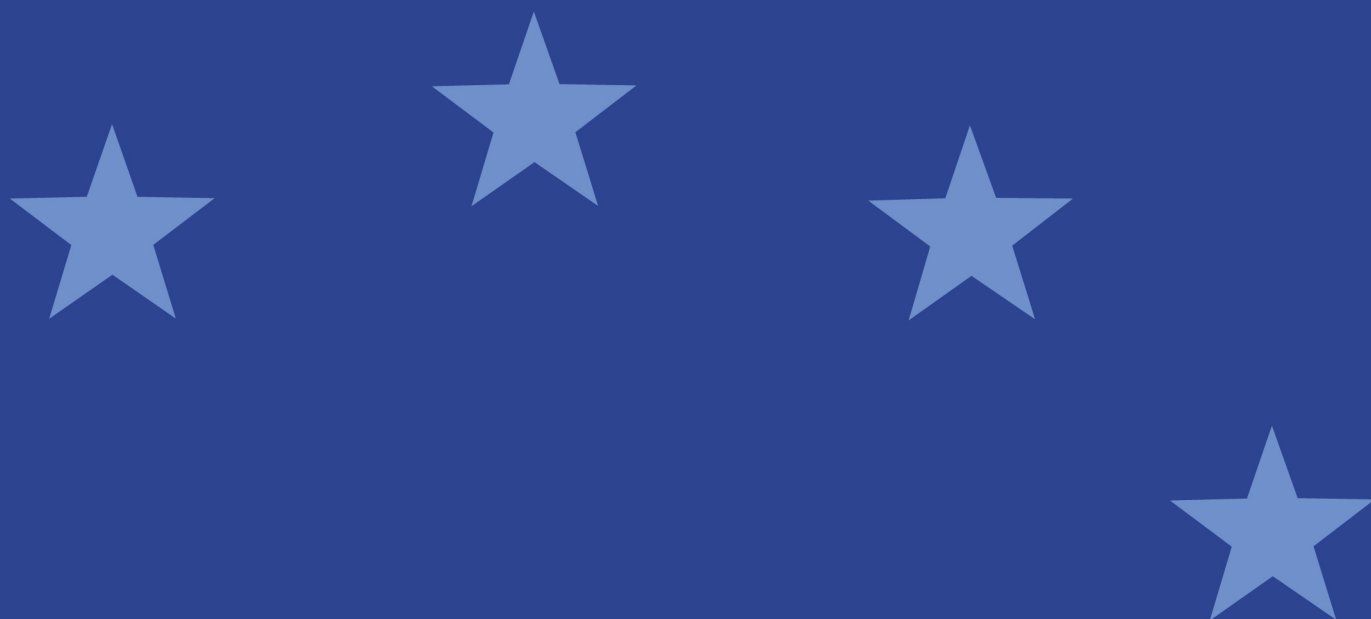


## **Response Form to the Consultation Paper on the review of certain aspects of the Short Selling Regulation**



## 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](http://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](http://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](http://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	Finance Denmark
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Denmark

### Please make your introductory comments below, if any.

<ESMA\_QUESTION\_SSRR\_0>

In general when speaking about short selling, Finance Denmark is of the opinion that it is important to keep in mind that short selling is an important mechanism for effective price discovery and therefore it is also beneficial for market efficiency. Additionally, short selling also increases liquidity, reduces transactions costs and detects fraud.

In the consultation paper ESMA touches upon some recent cases regarding U.S. shares (GameStop and AMC Entertainment) and uses these cases to propose amendment to the short selling regulation. In our view, the behaviour that was identified with GameStop and AMC Entertainment is a behaviour that potentially is covered under the market abuse regulation and therefore should be dealt with under this regime rather than the short selling regulation.

<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>

Finance Denmark does not have any data or further input to this topic.

<ESMA\_QUESTION\_SSRR\_1>

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

<ESMA\_QUESTION\_SSRR\_2>

We support the proposed clarifications to SRR Article 2(1)(j).

<ESMA\_QUESTION\_SSRR\_2>

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

<ESMA\_QUESTION\_SSRR\_3>

We support the proposed clarification and the flexibility that comes with allowing the use of both measures contained in point (a) and (b) of Article 20(2) of SSR.

<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>

Finance Denmark supports the proposal in point 121, ie that indices, baskets and ETFs are excluded from the long term bans.

In our opinion, the proposal in point 123 can be difficult to operate in practice – for example in which situations can an investor be accused of intending to circumvent the ban?

Therefore, if the proposal is to be adopted, a clear framework is crucial in order to avoid any uncertainties for investors.

<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>

We support the suggested alignment of Article 20 and 28 in the SSR.

<ESMA\_QUESTION\_SSRR\_5>

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

<ESMA\_QUESTION\_SSRR\_6>

We support the proposed amendmendt Article 24(3) in the SSR.

<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>

Finance Denmark supports the amendments proposed in point 156 a-c.

Regarding ESMA's proposal in point 156 d) we would like to request som clarification from ESMA. For example will it be in compliance with the proposal to decrease a net long position? It would be welcomed if ESMA could provide more information around the effect of the proposal – for example with an example showing the differences between the current regulation and the proposal.

<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>

Finance Denmark supports to include subscription rights in the calculation of NSPs in shares.

<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>

We do not see that ESMA in the Consultation Paper has shown any evidence that the current rules have not been working in practice, for which reason we do not see any need for re-inforcing the legislative text regarding third-party's commitment.

<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>

Finance Denmark does not have any objections in regards of a five-year-long record-keeping obligation for locate agreements, but we do see additional administrative burdens with such an obligation.

<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>

Finance Denmark supports the proposal.

<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>

We do not see any need for changing the 50% limit for determination of the principal venue and thereby the exemption from certain notifications and disclosure requirements. As ESMA states in the consultation paper, trading of most of the EEA companies is concentrated in EEA trading venues due to the impact of the share trading obligation in MiFIR. We do not see that ESMA in the consultation paper has shown any justification for the suggested change. For that reason and until ESMA has elaborated further in this, we do not support 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>

**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>

We believe that turnover is good and well-known parameter which to our knowledge has been working well. We do not see a need for taking other parameter into account.

<ESMA\_QUESTION\_SSRR\_13>

**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>

Copenhagen Economics published in July 2021 a study on the Market impact of short sale position disclosure<sup>1</sup>. Based on a richer Danish data set the study confirmed that the herding behaviour observed is a result of the public disclosure of short positions and not just an effect of multiple investors reacting to the same information. In addition, the study showed that following a required public disclosure for a given stock there is an increase in daily volatility of 1.5 percent.

Naturally, Finance Denmark supports a transparent and well-functioning market. The study from Copenhagen Economics confirms that the disclosure requirements in the SSR have implications on the market. We believe this is an argument for increasing the threshold, or at least important to keep this in mind when discussing a potential change of the publication threshold.

In the consultation paper ESMA touched upon the short squeeze that was observed in the U.S. in relation to GameStop. Finance Denmark strongly emphasizes that if regulators wants to regulate such behaviour it should not be handled through SSR but instead through the Market abuse regulation. The behaviour that the market saw with GameStop was not initiated by short sellers but rather by investors' predatory trading (meaning "trading that induces and/or exploits the need of other investors to reduce their positions").

<ESMA\_QUESTION\_SSRR\_14>

**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>

As ESMA states in the consultation paper the Danish Finanstilsynet publishes today aggregated NSPs on a monthly basis. As such Finance Denmark has not identified or been made aware of any concerns in this regard for which reason we do not have any objections, if publication of aggregated NSP becomes a standard in the future. We believe that publication on a monthly basis would be adequate.

<ESMA\_QUESTION\_SSRR\_15>

**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.**

<ESMA\_QUESTION\_SSRR\_16>

Finance Denmark is not aware of any problems with the identification of the issued share capital.

<ESMA\_QUESTION\_SSRR\_16>

**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.**

<ESMA\_QUESTION\_SSRR\_17>

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<sup>1</sup> <https://www.copenhageneconomics.com/publications/publication/market-impact-of-short-sale-position-disclosures>

Today financial institutions have implemented reporting procedures for notification of NSPs. We can support a centralized notification and publication system for communication of NSPs provided that the reporting in the future will continue to go to the LCA as a one point of entry and it is for the LCA to report to a centralized database.

<ESMA\_QUESTION\_SSRR\_17>