

**Answer to the Consultation Paper “Review of certain aspects of the Short Selling Regulation” by
Commerzbank AG**

About Commerzbank

Commerzbank is the leading bank for the German Mittelstand and a strong partner for around 30,000 corporate client groups and around 11 million private and small-business customers in Germany. The Bank's two Business Segments – Private and Small-Business Customers and Corporate Clients – offer a comprehensive portfolio of financial services. Commerzbank transacts approximately 30 per cent of Germany's foreign trade and is present internationally in almost 40 countries in the corporate clients' business. The Bank focusses on the German Mittelstand, large corporates, and institutional clients. As part of its international business, Commerzbank supports clients with German connectivity and companies operating in selected future-oriented industries. Following the integration of Comdirect, private and small-business customers benefit from the services offered by one of Germany's most advanced online banks combined with personal advisory support on site. Its Polish subsidiary mBank S.A. is an innovative digital bank that serves approximately 5.5 million private and corporate customers, predominantly in Poland, but also in the Czech Republic and Slovakia. In 2020, Commerzbank generated gross revenues of some €8.2 billion with almost 48,000 employees.

Emergency measures adopted under SSR

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

The competency to address concerns on financial stability and to act in case of developments impacting the resiliency of financial markets shall remain available to RCAs.

In Commerzbank's experience, RCAs has used that competency very cautiously and moderately, so that the objective of market stabilization has been achieved when it was exercised.

At the same time, Commerzbank recommends that the competency shall be limited to those cases that are already in scope.

Q2: What are your views on the proposed clarifications?

From a Commerzbank point of view, the current definition is misleading and has caused confusion. Therefore, it makes sense to adjust the definition in Art. 2(1)(j) of the SSR to include the definition for the emergency measures.

Q3: Do you agree with the proposed clarification?

Yes.

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?

A percentage-based weighting approach would be preferable, as this would set clear standards through Europe and could be challenged by markets participants.

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

Yes.

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

Yes.

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

Yes.

Review of SSR regarding the requirements for the calculation of NSPs, the “locate” rule and the list of exempted shares**Q8: What are your views on ESMA’s proposal to include subscription rights in the calculation of NSPs in shares?**

Commerzbank highly recommends not to include subscription rights in the calculation of NSPs in shares because of the following reasons:

- The inclusion of subscription rights represents a break with the previous scope of the SSR, as this has so far related exclusively to shares, which, unlike subscription rights, have their own ISIN. Subscription rights are merely rights similar to shares. There is a risk that the proposed inclusion will extend the scope of the SSR through „the back door“. In our opinion, the objective of the new regulation would be better achieved via the transaction reporting.
- Subscription rights are calculated using by using the issued share capital. This comprises – as of now – exclusively shares already issued. If subscription rights are now also included into the calculation, the calculated NSP result will be distorted.
- Subscription rights are also not included in the computation of voting right notifications, which are a similar type of regulation.

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?

Yes, we agree with the proposal to reinforce the third-part’s commitment. From a Commerzbank’s point of view, it would make sense to simplify the whole process. Therefore, we recommend implementing alternative (B).

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

Yes, as the five-year-long record-keeping obligation is a regulatory standard.

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

Commerzbank agree with the reinforcing and harmonizing sanctions for “naked short selling”, but highly recommends not to include a minimum sanction, because of the following reasons:

- A breach of Art. 12 can occur for several reasons (e.g., an IT outage, operational incident), which by its nature should not lead to mandatory penalties.
- Minimum penalties should be rejected in principle as the possibility should also remain open for the RCAs not to impose any penalties after considering all facts.
- Rule examples could be added to the SSR, which, if applicable, would result in penalties or no penalties

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

Commerzbank welcomes the proposal to limit the applicability of the SSR to shares of which 60% are traded in the EU.

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

No, we do not see any need to specify the parameters.

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.

No, we do not see any need to modify the thresholds.

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

No comment.

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.

Commerzbank monitors its short positions in an automated way. In order to identify disclosable net short positions, it has to rely on a data feed of the respective issued share capital. Up to date, we have not identified any data provider of constantly reliable data quality. Especially in case of capital increase or decrease, some data providers take a long time to update their data base so that in the meantime alerts are generated on a wrong data basis. Furthermore, data may be missing for small issuers.

From the point of view of market practice, it would be very helpful if ESMA would host a register with the issued share capital where every issuer is responsible to submit its capital in a timely manner. This would relieve the burden for each market participant to search the web or other data sources for the right share capital individually and be a big step forward towards a transparent capital market.

Q17: Do you agree with the establishment of a centralized 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.

Commerzbank supports the establishment of a central notification and publication system, as for the following reasons:

- Research of country specific requirements would become obsolete

- A single point of contact further simplifies and harmonized the different European requirements