

Deutsche Börse Group
Response

to ESMA70-145-127

**“Consultation Paper on the evaluation of certain elements of the Short Selling
Regulation”**

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Introduction

Deutsche Börse AG (DBG) would like to thank ESMA for the opportunity to comment on the Consultation Paper on the evaluation of certain elements of the Short Selling Regulation (SSR). Among others, DBG operates regulated markets by way of exchanges for securities and derivatives as well as a variety of Multilateral Trading Facilities (MTFs). As such, trading venues of DBG have different arrangements in place to prevent a disorderly decline in the price of a financial instrument and consider the objective scope of applicability of imposing a ban as determined by Art. 23 of the SSR as highly limited. Thus, the document at hand contains our general comment on the specific point of short term restrictions on short selling in case of a significant decline in prices (Article 23 of SSR) addressed in Section 3 of the Consultation Paper.

General Comment

Since the application of the SSR, the management board of the Frankfurter Wertpapierbörse (FWB) did not take any decision to impose a short-term ban. Reason is that we perceive both of the necessary preconditions for imposing a ban as determined by Art. 23 SSR to not have been met in any case.

We observe significant price declines on a regular basis and across the different categories of financial instruments covered. Those are effectively one of the prerequisites as defined by Art. 23.1 first sentence of the SSR. However, we did not see since 2012 the necessity for interventions in order to prevent a disorderly decline in the price of the financial instrument. This is because existing safety measures on our venues to protect the integrity of the price discovery process such as volatility interruptions effectively fulfil the regulatory purpose of the SSR – which is to prevent prices from declining in a disorderly fashion. Given the mandatory safety provisions for trading venues as defined by MiFID II and already implemented on our trading venues, we consider the objective scope of applicability of the SSR as highly limited.

In addition, we are of the view that the provisions for triggering a ban on short-selling activities do not take into account that it is literally impossible to determine a causal relationship between these price declines and a short sale. Rather, we consider that an unambiguous and comprehensible justification for imposing a short-term ban may not be given.

Summarizing the previously raised arguments, we consider the regulatory purpose of the SSR of protecting the price discovery process to be fully met by well-established safety measures and reinforced in the future by the requirements from MiFID II on circuit breakers. Therefore, we kindly ask to consider the abolishment of the provisions of Art. 23 SSR and welcome the consideration of ESMA to propose to the Commission to eliminate altogether the power for

competent authorities to activate the type of short-term bans on short selling set out under Art. 23 SSR.

We trust our comments are seen as a useful contribution to the discussion and remain at your disposal for further discussion.

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