



Deutsche Börse Group

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- Comments on ESMA Consultation Paper -

Exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps

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Introduction

Deutsche Börse Group (DBG) welcomes the opportunity to comment on the Consultation Paper on the ESMA guidelines in accordance with Article 16(2) of the ESMA Regulation. It also welcomes that ESMA considers that there is a presumption that a notification should be accepted by the competent authority if the person that notifies also participates to a market making or liquidity provision contract or programme with a trading venue.

As Regulated Markets, Xetra and Eurex propose to their members market making schemes designed to enhance liquidity on the market. On Xetra (Cash market) several schemes are available, the Designated Sponsorship being the most comprehensive programme with constraining requirements in terms of time presence, price and sizes for the sponsor. Requirements differ with the liquidity class of the asset. Other schemes are available to members like the TOP liquidity provider programme on DAX instruments and the liquidity provider programme on XIM (Xetra International Market).

Eurex does not propose contractual market making contracts anymore (since 2007) but gives the opportunity to market participants to benefit from an incentive scheme where market making activity is rewarded if it fulfils some predefined requirements similar to the Designated Sponsor requirements on Xetra. Market makers could then either use their Market Maker reports to demonstrate their activities, or reports could be produced by Eurex showing in which underlying instruments they have been fulfilling certain obligations in the last months.

DBG believes that **all market makers on its markets effectively participate to enhancing the market liquidity**. We also believe that the calibration of the programmes' criteria is essential but depends on the market structure, the market participants, and the asset's liquidity and **should therefore be left as much as possible to the discretion of the trading venue**.

DBG proposes to answer below some of the questions listed in the Consultation Paper on Exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps.

Q1: Do you agree with the above approach regarding the definition and scope of the exemption for market making activities? Please, explain.

No comment.

Q2: Do you agree that when determining the RCA for notification purpose the third country entity should be assessing the turnover in relation to its market making activities as defined in Article 2(1)(k) of the Regulation? Please, explain,

No comment.

Q3 Do you agree with general principles applicable to persons intending to make use of the exemption under Article 17(1) of the Regulation? Please, explain,

No comment.

Q4 Do you agree with principles applicable to persons carrying out market making activities in accordance with Article 2(1)(k)(i) of the Regulation? In your view which of the two options in paragraph 44 – 45?- should apply to quotes entered when carrying out market making activities? Do you see another alternative to the two options proposed? Please, provide explanations.

DBG agrees with those conditions. Market makers on Xetra for equities, named Designated Sponsors, offer binding bid- and ask prices (quotes) at almost any time. The quotes must satisfy certain quality criteria (minimum requirements) such as minimum quote size (smallest permissible number of stocks on buy and sell side), maximum bid/ask spread of the quotes (largest permissible spread between bid- and ask limit) and minimum percentage of quoting during the trading phases. Banks, broker firms and securities trading houses admitted to trading on Xetra® may be admitted as Designated Sponsor at Deutsche Börse. Financial institutions, although members of Xetra, but who are not allowed to provide services for third parties cannot act as Designated Sponsor at this point of time. Other market making contracts with less constraining requirements exist like the TOP liquidity provider programme proposing an incentive scheme for improving market liquidity on DAX instruments.

DBG opinion on paragraph 45 will be expressed below (Q7).

Q5 Do you agree with the principles applicable to persons carrying out market making activities in accordance with Article 2(1)(k)(ii) of the Regulation? Please, explain.

No comment.

Q6 Do you agree with the qualifying criteria for the comparable size of orders? Please explain.

ESMA proposes that the size of the orders issued in the market making capacity is assessed in consideration of the average trading size (ATS) for the said financial instrument on a specific venue. But ESMA does not provide any information on the frequency of the assessment.

The minimum quote size as defined on Xetra is related to average order size of the instruments included in the respective liquidity class and is reviewed on a weekly basis.

Q7 Do you agree with the qualifying criteria for competitive price of orders? Please explain.

DBG believes that requirements for market making activities in highly liquid shares shall not necessarily be more demanding than those in less liquid shares. Provision of liquidity is indeed more difficult for market maker for shares whose prices are more volatile.

Q8 Which option do you favour? Please, justify.

DBG would favour an alternative option (option 3) where a maximum spread is defined. Spread classes are defined on Eurex and Xetra on the price level and the liquidity of the (underlying) instrument. This approach gives the possibility to the market maker to propose asymmetric quotes and therefore to manage imbalances better.

This approach is preferred to option 1 and option 2. Indeed, Designated Sponsors still quote manually and a dynamic spread requirement as defined by option 1 would require an automatic solution on Designated Sponsor side. Option 3 of a maximum spread avoids permanent updates on quotes with positive effect on system load. The maximum spread we agreed on with our market makers considers levels of liquidity i.e. the higher the liquidity the tighter the spread requirement due to lower risk on market maker side.

Q9 Do you agree with the qualifying criteria for ongoing presence on the market? Do you think different criteria should apply when conducting market making activities in sovereign debt? Please explain.

DBG agrees that market making activities should on a monthly basis be undertaken for a minimum of the overall trading time on a given financial instrument. 90% might be seen as difficult to achieve for market makers especially for instruments other than shares.

On Xetra, the minimum participation is set to at least 90% of effective trading time, but 80% for ETFs and ETPs. The effective trading time is the time between the start of continuous trading and the start of the closing auction excluding the time of intraday auctions and volatility interruptions. On Eurex, the time presence is more complex to evaluate. Indeed, for options, it is defined differently, as different strikes and maturities come into play. Market makers typically insure a coverage of 85% of the overall trading time in x out of y strikes

(e.g. 7 out of 15) in e.g. the first 8 expiries.

Q10 Do you agree with the ESMA approach towards assessment of notification of intent to make use of the exemption? Please explain.

No comment.

Q11: Would you agree that frequency and systemic basis of the activities exempted under Article 2(1)(k)(ii) capacity should be assessed against the same qualifying criteria as applicable to systemic internalisers under Article 21(1) of the Commission Regulation (EU) No 1287/2006? Please, provide explanations.

No comment.

Q12: In your opinion, what would be the most appropriate qualifying criteria in terms of percentage to assess scale of activity eligible for exemption under Article 2(1)(k)(ii) capacity in comparison to overall proprietary trading?

No comment.

Q13 Do you agree that the above information needs to be provided in the notification form? Should historical data be also provided with the notification form? Please, provide justifications.

No comment.

Q14: Do you agree with 6 months after application of the Guidelines period for revising and assessing notifications made before entry into force of the Guidelines? Please explain.

No comment.

Q15: Do you agree that a list of market makers and authorised primary dealers published on the ESMA website according to Article 17(13) should at least include the above information? What additional information should be included? Please justify.

No comment.

We trust you would have found these comments useful and remain at your disposal for further discussion. Should you have any questions please do not hesitate to contact:

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