

## Consultation response - FIA EPTA

### *European Commission consultation on permanently lowering the relevant threshold for the notification of significant net short positions in shares*

- FIA EPTA welcomes the opportunity to respond to the European Commission's consultation on permanently lowering the relevant threshold for the notification of significant net short positions in shares.
- Short selling plays an important role in ensuring the proper functioning of financial markets in terms of liquidity and efficiency of price formation. It enables investors to manage risk and market-makers to facilitate risk transfer for others by hedging their positions through buying and selling shares. It is thus important that transparency requirements are well-calibrated, easy to implement and do not unduly detract from the benefits that short selling provides to the EU capital markets.
- FIA EPTA stands in favour of enhancing transparency of markets and takes note of the reasons why ESMA has used its extraordinary powers to temporarily lower the threshold for notification of significant net short positions in shares during Covid-19 economic turmoil. However, FIA EPTA believes that before permanently lowering the relevant threshold, the **European Commission should consider the added value of the resulting increase of number of disclosures and associated costs and acknowledge the need for a common short-selling disclosure system to avoid unnecessary burden for market participants and National Competent Authorities**. We would also like to understand what goal is ultimately reached by lowering the threshold to a non-substantial percentage.
- Furthermore, FIA EPTA regrets the absence of a full cost-benefit analysis, based on a normal-market situation. Such an analysis would have underlined the fragmentation issue of the current short-selling disclosure framework and brought further clarity on the added value of lowering on a permanent basis the relevant threshold. We therefore call on an efficiency analysis first of the current threshold *before* gathering more information as per the result of the proposed change.

### **The issue of fragmentation**

- Even though the computation of net short position is harmonized at EU level, the short-selling disclosure framework is still very much fragmented. Not only the information requested by each competent authority differs from one another, but each regulator has its own distinctive and mostly manual system of receiving disclosures. While some require completion of a form and email submission, others require completion of an online form via a portal. This caused considerable increase in the time spend on reporting during the crisis of March 2020.

Members reported that fragmentation of the reporting mechanisms meant that any increase in the number of disclosures could not benefit from economies of scale that might be possible through automation. Considerable additional resources were therefore being devoted to interacting with the various portals. We undertook a review of reported data amongst members and concluded that the increase in the number of reports per annum on an average by monthly basis was over 400%.

- Lowering permanently the relevant threshold would require from market participants to systematically notify and disclose additional net short position information. This would make the current disclosure framework even more burdensome than it already is for both the users and the NCAs.

### **The common disclosure system**

- To reduce these additional costs, FIA EPTA calls for a centralised and common approach of how market participants provide disclosures, using similar electronic format. As the calculation is uniform across the EU, the ability to submit one filing of all net short positions centrally with the appropriate competent authority would provide a faster, more efficient, and less burdensome method to provide net short position information.
- FIA EPTA wishes to underline the importance of using electronic feed to avoid the cost of fragmentation. By reducing manual work, it will simplify market participants' ability to fill rapidly the relevant information, on a daily basis.
- Furthermore, a common approach will enable ESMA to have a single view across EU of net short positions. It will also facilitate ESMA's capacity to control the implementation of the short selling regulation across all competent authorities.
- Finally, a common system would reduce the operational burden for competent authorities regarding information submission.

### **Conclusion**

FIA EPTA fails to understand the purpose of permanently lowering the notification threshold which will merely result in a considerable increase of filings by market participants without adding any meaningful transparency. FIA EPTA believes that a centralised mechanism to disclose net short positions via an electronic portal or feed would considerably improve the efficiency of net short position reporting, both for market participants (disclosures and costs), as well as for competent authorities and ESMA (consistency of disclosed information). We therefore recommend to focus the review on a centralized mechanism instead of lowering the threshold to be better placed for adequate monitoring.

### **About FIA EPTA**

FIA European Principal Traders Association (FIA EPTA) represents 30 independent European Principal Trading Firms (PTFs) which deal on own account, using their own capital for their own risk, to provide liquidity and immediate risk-transfer in exchange-traded and centrally-cleared markets for a wide range of financial instruments, including equities, bonds, options, futures and ETFs. Our members are important sources of liquidity and stability we create for end-investors and markets across the European Union.