Consultation Response

FCA Consultation Paper 25/29 – Changes to the UK Short Selling Regime

16 December 2025

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on FCA Consultation Paper 25/29 – Changes to the UK Short Selling Regime. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate for stable, competitive, and sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA), a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive Summary

AFME welcomes the FCA's initiative to modernise and streamline the UK short selling regime and broadly supports many of the proposals set out in CP25/29. Our members recognise the importance of a clear, operationally workable framework and are supportive where the FCA's changes increase clarity, reduce unnecessary burden, or preserve elements of the current regime that function well.

At the same time, we identify several areas where further detail, greater alignment, or adjustments to proposed mechanics would help ensure the regime operates effectively for wholesale market participants. These include the treatment and sourcing of issued share capital data, the scope of instruments included in net short position calculations, the methodology for determining principal country, the practical design of market-maker exemption processes and systems, and the usability of the Reportable Shares List.

Across the consultation, our comments emphasise the need for predictability, proportionality, and implementation approaches that reflect how modern market-making and reporting systems operate in practice.

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Questions

Position reporting

Question 1: Do you agree with our proposals to replicate existing requirements for calculating and reporting NSPs?

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We mostly agree with the FCA's proposals to replicate existing requirements for calculating and reporting NSPs.

We note however that the calculation logic can require disclosure of a net short position even where the apparent short is, in fact, a hedge of an excluded instrument. For example, a short position in the shares of an issuer that is held to hedge a long convertible bond position would be reportable, while the offsetting long convertible – which converts into shares not yet in issue – is out of scope of the net short position calculation. As a result, the disclosed position does not give the market a transparent view of the firm's true net economic exposure.

To avoid this outcome, we suggest that the FCA reconsider the scope of instruments included in the net short position calculation – for example, by bringing certain convertible bonds and warrants into scope and adjusting the denominator on an as-converted basis, similar to the approach used in the US for convertible bond positions.

Question 2: Do you agree with our proposals to extend the reporting deadline and change the time for calculation?

We are supportive of the extension of the reporting deadline and of the change in time for calculation.

Question 3: Do you agree with our proposal to provide additional guidance on issued share capital?

While we welcome the proposal to provide additional guidance, the change does not in itself reduce the burden of sourcing accurate data for reporting.

Many firms rely on automated solutions and market data feeds. The divergence between the UK SSR denominator and the denominator used under the DTRs means firms must obtain two separate data items – shares in issue, and shares held in treasury. In practice, accurate reference data on shares held in treasury is not consistently available from all market data providers.

By contrast, in most EU countries both significant shareholder reporting and short selling use the same denominator. In those markets, a single 'shares outstanding' figure (such as that available from Bloomberg) is sufficient, which significantly reduces the operational burden of sourcing multiple denominators from different providers.

While an FCA-maintained, centrally available denominator database would be the optimal solution, greater alignment between the DTR and UK SSR denominators would also materially ease the data-sourcing burden for reporting firms.

On the proposal that a person should act reasonably, having regard to publicly available information – we note that many companies only provide updated issued share capital information on the morning following trading, which means that updated numbers are only available at 7am (or slightly later). Market data providers send their updates overnight, before the updated data is available, which means there will still be a requirement to search for manual updates before submitting NSPs. This proposal therefore is unlikely to provide any benefit.

The approach for index, basket and ETF composition appears unchanged. As positions held via these products are generally very small, we would question the benefit of including such positions in the NSP calculation.

Question 4: Do you agree with our proposed approach to group reporting?

On the approach to reporting for constituent legal entities within a group, we would like to propose that there be no distinction between managed and non-managed positions, so that the same calculation methodology applies to both. This would allow larger firms with mixed managed and non-managed businesses to calculate positions in aggregate at entity level.

We also recommend that the net short position be calculated at group level rather than on an entity-by-entity basis, since entity-level calculations can give a misleading picture of a firm's true short exposure

by ignoring net long positions held in other entities. Adopting a group-level approach would, in turn, remove much of the complexity around switching between legal entity and group notifications and would simplify reporting for both firms and the FCA.

Question 5: Do you agree with our proposal to include the correction notification form in our rules?

We do not submit a response to the question.

Question 6: Do you agree with our proposal in relation to ETFs and UCITS? We would welcome views on any further changes relating to how positions in UCITS, ETFs, or similar instruments are calculated by persons or funds?

We propose that this be simplified to either always include UCITS and ETFs or always exclude UCITS and ETFs. The proposed additional requirement would result in a manual process to identify those UCITS and ETFs in scope of reporting, which would generate more burden on the reporting firms.

Question 7: Do you agree with our proposed transitional arrangements for position reporting?

We do not submit a response to the question.

Question 8: Do you agree with our proposed approach to waivers?

We broadly welcome the ability for the FCA to apply a waiver from reporting requirements but require further detail on what circumstances would be considered exceptional to request such a waiver, and whether there would be a requirement to subsequently report any short positions not reported while the waiver was granted.

Question 9: Do you agree with our plan to update the operational arrangements for the submission of position notifications?

Based on the limited information provided, we can see merit in the plan to update the operational arrangements for submitting position notifications. However, we would need considerably more detail than is currently available before we could form a fully informed view. Members also request more clarity around whether the new system will support firms in meeting their record-keeping requirements, by providing functionality so that firms can download such records from the system of their position notifications.

Based on what has been set out so far, we would strongly encourage the FCA to enable firms, in addition to bulk submissions, to submit NSPs systematically via a single file using point-to-point file transfer, without requiring an individual to log into the PMU portal to upload files manually. Retaining such an option would deliver a significant operational benefit for reporting firms.

Question 10: Is there anything else associated with the reporting requirements that you would like to raise?

We would be grateful if the FCA could clarify what action would be expected if an entity were to have an open position under the old regime, and the share to which the position relates is not included in the reportable shares list under the new regime. Must a closing action be taken, or do the requirements simply fall away?

Covering

Question 11: Do you agree with our proposals to retain existing covering requirements?

We do not submit a response to the question.

Question 12: Do you agree with our proposal to replace the guidance on record keeping arrangements with a new rule within the Short Selling Sourcebook?

We do not submit a response to the question.

Question 13: Do you agree with our proposal for subscription rights to add the requirement to ensure that settlement can be effected when due?

We support the objective of promoting orderly settlement of subscription rights and agree that firms should take reasonable steps to ensure that settlement can be effected when due. However, our members are concerned that the proposed wording could be read as placing an absolute obligation on the short seller to ensure settlement, which goes beyond what is realistically within their control.

In practice, firms can ensure that their side of the transaction is fully ready (for example, by ensuring they have the necessary cash or securities, and that their operational processes support timely settlement). They cannot, however, control issuer-side or third-party failures, system issues, or other factors outside their sphere of influence.

We would therefore ask the FCA to confirm that it does not intend to hold firms accountable for settlement failures arising from circumstances beyond their control, and to consider reflecting this in the guidance (for example, by framing the expectation in terms of taking all reasonable steps within the firm's control to enable settlement when due).

Question 14: Do you agree with our proposal to change the information required in an 'easy-to-borrow or purchase list' for it to be considered an 'easy-to-borrow or purchase confirmation'?

We do not submit a response to the question.

Question 15: Do you have any views on whether the settlement expectations for borrowing and locate arrangements should be aligned?

We strongly recommend that settlement expectations for borrowing and locate arrangements should not be aligned. The requirements pertaining to borrowing and locate arrangements differ because the situations in which entities will have recourse to each possibility also differ. It follows that the relevant conditions for a scenario in which a person has borrowed or has entered into an agreement to borrow the relevant instruments are subject to the more definitive standard of 'settlement can be effected when it is due' given the higher level of contractual certainty and, by contrast, that there is only a 'reasonable expectation' in respect of locate arrangements, reflecting the contractual nature of a locate arrangement. An earlier generation of policymakers and market participants went through the relevant process of consideration and designed the current system with these differences apparent.

From our members' perspective, the current framework is functioning effectively and does not give rise to practical problems in ensuring orderly settlement. By contrast, changing it could create significant unintended consequences, particularly for market-making and other liquidity-provision activities that rely on flexible use of locates. In line with the principle that reforms should not seek to 'fix' what is not broken, we would therefore strongly favour retaining the existing requirements and not aligning settlement expectations for borrowing and locate arrangements.

Question 16: Is there anything else associated with covering that you would like to raise?

We do not submit a response to the question.

Reportable shares list

Question 17: Do you agree with our proposals to change the calculation methodology for determining the principal country?

We welcome the FCA's objective of clarifying and updating the methodology for determining the principal country and, in principle, have no objection to the use of a more structured set of criteria.

However, our members are concerned about the degree of discretion afforded to the FCA in the way these criteria are framed.

In particular, the use of formulations based on 'may' risks creating uncertainty for firms about how the FCA will apply the methodology in practice and under what circumstances it might depart from the primary quantitative indicators.

We would therefore encourage the FCA to consider tightening the drafting so that, where specific factors are listed, the FCA is required to take them into account, rather than merely being permitted to do so. For example, replacing 'may' with 'shall' in key provisions would help to ensure that the methodology is applied in a consistent, rule-based way, while still leaving room for the FCA to exercise judgement where genuinely exceptional circumstances arise.

Subject to these points on legal drafting and predictability, we are broadly supportive of the proposed change in calculation methodology for determining the principal country.

Question 18: Do you agree with our proposals to consider new criteria when deciding whether to determine that our reporting and covering requirements do not apply?

We do not submit a response to the question.

Question 19: Do you agree with our proposals for maintaining the RSL (including for maintaining on a monthly and ad hoc basis)?

We agree with the principle of positions being reportable from the moment a share is added to the reportable shares list, as clarified to us by the FCA in direct correspondence. We would welcome the FCA confirming this publicly for the benefit of the wider community.

We are curious as to the likely extent of monthly and ad hoc updates. If a significant number of updates are made in this way, we wonder whether the value of a full refresh of the list every two years may diminish. If there is a clear purpose for a full refresh of the list every two years that cannot be achieved with timely updates on a monthly and ad hoc basis, we would welcome the FCA explaining the purpose envisaged.

Question 20: Do you agree with our proposal to publish a draft of the RSL 2 months prior to the main commencement day?

We consider that publishing a draft RSL two months prior to the main commencement day should, in principle, be sufficient. However, our members stressed that to be able to answer the question fully, they need to know the format of the list.

AFME members strongly encourage the FCA to ensure that both the draft and final RSL are provided in a machine-readable format (e.g. CSV or similar) that can be ingested into firms' systems in a straightforward manner.

We would welcome confirmation that reporting firms may rely exclusively on the RSL to determine in-scope reporting obligations, and that they will not be required to identify potential additions between monthly updates. For example, if a new company is admitted to trading on the LSE and meets all criteria for inclusion in the RSL, firms should not be expected to calculate independently whether that company falls within scope.

If, however, the FCA expects firms to identify such cases, we would strongly request that the RSL be updated on an as-needed basis so that firms can continue to rely solely on the RSL as the definitive source for scoping their reporting obligations.

We request that the RSL be made available via an API or other automated channel that does not require manual file downloads from a website (for example, along the lines of how EU FIRDS data is accessed via ANNA).

Technical specifications and data fields should be published at least six months prior to the main commencement day to allow sufficient time to design and build IT systems for automatic processing. A draft RSL published two months before commencement would then be adequate for testing and implementation.

Question 21: Is there anything else associated with the RSL that you would like to raise?

We do not submit a response to the question.

Market maker exemption

Question 22: Do you agree with our proposals to streamline the process for using the market maker exemption?

We welcome the FCA's objective of simplifying and modernising the process for using the market maker exemption and support efforts to reduce administrative burden while maintaining appropriate safeguards. However, our members have concerns about the instrument-based permission model and would prefer a more activity-based approach.

In practice, market-making desks stand ready to provide liquidity across a wide and frequently changing range of instruments. Tying the exemption to specific instruments risks creating a static and operationally complex framework that does not reflect how modern market making actually works. Members are concerned that the instrument-based system requires constant updates as trading scopes evolve, and introduces uncertainty at the point of trade as to whether the exemption can be relied upon. This is particularly challenging for global banking groups managing permissions across multiple jurisdictions and could, in some cases, discourage firms from providing liquidity where it is most needed.

On this basis, AFME's preference is for an activity-based permission, granted at entity level and anchored in clear criteria for what constitutes genuine market-making activity, supported by robust governance, record-keeping and supervisory oversight.

Should the FCA decline to amend its position, we would request that the FCA provide a tool for downloading (in machine readable format) all ISINs and legal entities for which a market maker exemption exists, for reconciliation purposes.

We would also encourage the FCA to explain more clearly what additional regulatory or supervisory benefit it expects to gain from an instrument-based permission model compared with such an activity-based framework, given the additional complexity it would introduce. If the FCA considers some level of granularity indispensable, we would urge it to limit this to narrowly defined cases rather than making instrument-based permission the general default.

Question 23: Do you agree with the proposed changes to our systems for receiving market maker exemption notifications?

In the absence of a move to an activity-based market making exemption, we support the FCA's objective of updating and streamlining the systems used to receive market maker exemption notifications and our members are, in principle, comfortable with moving to an FCA dashboard-based solution.

However, our members have emphasised that the workability of the new system will depend on the ability to import data directly (for example, via spreadsheet upload or similar functionality). For wholesale banks managing multiple entities and desks, a system that requires manual keying of notification data into the dashboard on a field-by-field basis would be operationally burdensome, prone to input error, and difficult to scale. Members also request more clarity around whether the new system will support firms in meeting their record-keeping requirements, by providing functionality so that firms can download such records from the system of their market making exemption notifications.

Based on what has been set out so far, we would strongly encourage the FCA to enable firms to submit market making exemptions systematically via a single file using point-to-point file transfer, without requiring an individual to log into the PMU portal to upload files manually. Retaining such an option would deliver a significant operational benefit for firms.

On this basis, we are supportive of the proposed systems changes provided the FCA dashboard includes a straightforward mechanism to upload data (e.g. from spreadsheets or equivalent formats). We would encourage the FCA to confirm that such bulk-upload functionality will be available from the outset.

Question 24: Do you agree with our approach to the withdrawal of market maker exemptions?

In the explanatory text accompanying the proposed changes to the Handbook, the FCA states that Article 17(10) of the UK SSR requires firms to notify the FCA where there are any changes affecting the firm's eligibility to use the exemption, or if it no longer 'wishes' to use the exemption.

It then states that the FCA proposes to expand the circumstances to also require firms to notify it where they no longer 'need' an exemption, where they themselves consider they no longer meet the conditions for the exemption.

In the draft Rules following the explanatory text however, the only mention of what a firm may 'wish' is as a negative condition (i.e., that the firm must not have expressed such a sentiment) in 5.5.1 R (2) (b) (i). The mentions in 5.6.4 R refer only to 5.7.1 R (1) (a) (i).

It is unclear if this limited use of 'wish' is intentional, or is an oversight.

If intentional, it would be helpful if the FCA could clarify the intended nuance of the shift in language from a requirement based on a firm's 'wish' to use an exemption, to its 'need' to do so.

Question 25: Do you agree with our approach to the prohibition of market maker exemptions?

We do not submit a response to the question.

Question 26: Do you agree with our proposed transitional arrangements for the market maker exemption?

We recognise the importance of clear transitional provisions to ensure continuity for firms currently relying on the market maker exemption, and to allow an orderly move onto the new Short Selling Sourcebook framework and associated systems.

On the basis of our understanding, we welcome the FCA's intention to avoid any gap in coverage by allowing existing, valid market maker notifications under the current regime to continue to have effect during the transition. This is particularly important for wholesale banks with multiple entities and desks, where any uncertainty about the status of existing notifications could have a chilling effect on liquidity provision.

That said, our members would favour transitional arrangements that are as simple and friction-free as possible in practice. In particular, they would welcome:

- a clear confirmation that firms with existing recognised market maker status will be treated as continuing to benefit from the exemption without any additional interim steps, until they are able to move onto the new notification process; and

- an implementation approach under which firms can transition directly from the current email-based model to the new system (for example, the dashboard) at the appropriate point, without having to navigate multiple overlapping processes.

Subject to these points of clarification, we are broadly supportive of the FCA's proposed transitional arrangements for the market maker exemption and would welcome continued engagement on practical timing and communications to ensure firms can plan the migration effectively.

Question 27: Do you agree with our proposed timeline for implementation?

AFME members are broadly comfortable with the proposed implementation timeline and do not see it, in itself, as problematic. However, they find it difficult to give a definitive view while there remains uncertainty around the technical architecture and design of the new systems (in particular, how 'plug-and-play' the FCA's solutions will be, and what level of build and integration will be required on firms' side).

In this context, our main request is that the FCA provide technical detail and specifications as early as possible, together with clarity on how firms will connect to and use the new systems in practice. Early visibility of the architecture, data formats and testing arrangements will be critical for wholesale banks to assess effort, allocate resources and confirm that the proposed timeline is genuinely deliverable.

Subject to that caveat – i.e. on the understanding that detailed technical information will be made available in good time – we are broadly supportive of the proposed implementation timeline.

Question 28: Is there anything else associated with the market maker exemption that you would like to raise?

We do not submit a response to the question.

Aggregate net short position disclosure

Question 29: Do you agree with our proposed approach to late and inaccurate position reports?

We would welcome further clarity on the treatment of firms with NSPs in cases where a waiver has been granted.

In particular, we would welcome clarity as to whether the FCA's intention is that such firms would still be required to report any NSPs at a later date, but, by virtue of the waiver, would not be subject to supervisory or enforcement action in respect of those positions.

Question 30: Do you agree with our proposed timing for the publication of ANSPs?

We have no concerns in relation to the proposed timing for the publication of ANSPs.

Question 31: Do you agree with the proposed content and format of disclosure?

We do not submit a response to the question.

Question 32: Do you agree with our proposed transitional arrangements for the publication of ANSPs?

We do not submit a response to the question.

Question 33: Is there anything else associated with the disclosure of ANSPs that you would like to raise?

We do not submit a response to the question.

Statement of Policy

Question 34: Do you agree with us retaining our existing approach to the exercise of our emergency powers, including the high bar that we set for their use?

We agree with the FCA retaining its existing approach to the exercise of its emergency powers, including the high bar that it sets for their use.

Question 35: Do you agree with us replicating the current approach to adverse events or developments which constitute a serious threat to financial stability or market confidence in the UK?

We agree with the FCA replicating its current approach to adverse events or developments which constitute a serious threat to financial stability or market confidence in the UK.

We reiterate the importance of predictability in the FCA's use of its powers. Such predictability should also be maintained even in adverse situations. The FCA can assist the market by communicating its considerations and intentions clearly, effectively and in a timely manner, the better to ensure the market is fully informed as early as possible of any action the FCA is likely to take.

Question 36: Do you agree with us replicating the current approach to limiting the disorderly decline in the price of financial instruments, following a significant fall in their price?

We agree with the FCA replicating the current approach to limiting potentially disorderly declines in the price of financial instruments, following what the FCA describes as significant falls in prices.

Question 37: Do you agree with the different exceptions which we could apply to our emergency measures?

We note the list of example exceptions the FCA may consider in relation to measures it imposes is illustrative and non-exhaustive. We also note that it is impossible to anticipate the form of the next crisis which may warrant the use of the FCA's emergency powers. We consider it important for the regulator to have the flexibility to include exceptions when imposing emergency measures. A need for such measures should arise in only the rarest of rare circumstances – but when it does, the regulator must be capable of tailoring its action to the circumstances of the event, with appropriate exceptions included to permit as far as possible the ongoing functioning of markets.

Question 38: Do you agree with how we would communicate the use of our emergency powers?

We do not submit a response to the question.

Question 39: Do you have any additional thoughts on our Statement of Policy that you wish to share?

We do not submit a response to the question.

Use of supervisory, investigative, and enforcement powers

Question 40: Do you agree with our proposal to extend the policies and procedures in DEPP and the ENFG which relate to the exercise of supervisory, investigative, and enforcement powers to breaches of the short selling requirements? If not, why?

We do not submit a response to the question.

Question 41: Do you agree with our proposal that decisions to take enforcement action under Part 14, together with determinations of applications under section 206B(4), should be taken by the RDC? If not, why?

We do not submit a response to the question.

Question 42: Do you agree with our proposal that Executive Procedures are the right mechanism for making decisions when giving directions under Regulations 10, 21, and 23 of the SSR 2025, or determining an application to vary or revoke a direction? If not, why?

We do not submit a response to the question.

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