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Stuttgart, 6<sup>th</sup> August, 2015

**Boerse Stuttgart's response to the ESMA Consultation Paper on Regulatory Technical Standards on the CSD Regulation – The Operation of the Buy-in Process**

Dear Sir or Madam,

Boerse Stuttgart would like to thank you for this opportunity to answer the questions raised in ESMA's Consultation Paper on Regulatory Technical Standards on the CSD Regulation – The Operation of the Buy-in Process (reference 2015/1065).

Boerse Stuttgart is one of Europe's leading stock exchange organizations for private investors. It is organized as a regulated market, ensuring safety and effectiveness in trading. With the European Warrant Exchange, known by its abbreviated name of Euwax, it is also Europe's most attractive trading place for leverage and investment products.

Boerse Stuttgart owes its premier position to the ongoing enhancement of its product portfolio and its customer-friendly, one-stop approach. Alongside leverage and investment products, investors can trade equities, bonds, investment fund units, and participation certificates. Trading is safe, fast, simple, and extremely efficient. Today, Boerse Stuttgart is Germany's leading player in the field of intermediary-based stock exchange trading. Especially as regards corporate bonds and investment fund units, Boerse Stuttgart leads the German market.

Yours sincerely,

Boerse Stuttgart GmbH

Dr. Christoph Boschan  
Member of the Management Board

Dr. Martin Wagener  
Regulatory Affairs

Annex

## Boerse Stuttgart response to the Consultation Paper

**Q1: Please provide evidence of how placing the responsibility for the buy-in on the trading party will ensure the buy-in requirements are effectively applied. Please provide quantitative cost-benefit elements to sustain your arguments.**

Boerse Stuttgart believes trading counterparties are best placed to provide this analysis.

**Q2: Please indicate whether the assumption that the trading party has all the information required to apply the buy in would be correct, in particular in cases where the fail does not originate from the trading party, but would rather be due to a lack of securities held by one of the intermediaries within the chain.**

For transactions executed on a trading venue and not cleared by a CCP, Art. 14 (1) 2 of the draft RTS imposes on trading venues the obligation to appoint a buy-in agent. This obligation leads to several legal issues and challenges for trading venues.

First and foremost, Boerse Stuttgart as a trading venue does not know whether a transaction has been settled or has failed and therefore it also does not know whether a buy-in should be or could be initiated. Thus, there may be a substantial lack of information for a trading venue regarding the necessity to initiate the buy-in process.

Secondly, considering Section 2, No. 12 of the Consultation Paper (page 8), CSDR requires the failing participant to reimburse the entity that executes the buy-in. This may lead to the legal assumption that the failing participant will be legally liable to the buy-in agent for the payment. If, however, the failing participant itself falls out or fails to reimburse the buy-in agent eventually, the trading venue might be exposed to additional legal risks under national civil law as the buy-in agent might now try to get compensated by the trading venue as the principal of the buy-in process according to Art. 14 (1) 2 of the draft RTS. This may possibly lead to a legal compulsion for the trading venues to establish e.g. an additional system of collaterals in order to secure themselves against any possible reimbursements of expenses / compensation for damages by the buy-in agent after the executed buy-in.

Furthermore we would like to stress that Art. 13 (2) of the draft RTS imposes without any legal cause an unjust obligation upon trading venues to transmit the relevant notifications of the receiving party under Art. 13 (1) to the CSD. It is not clear why a trading venue should operate as a notification intermediary between the receiving party and the CSD. In our view it is appropriate if the receiving party transmits the notifications directly to the CSD without the trading venue as an intermediary.

Finally, in our view there is no need for notifications to a trading venue mandated by Art. 15 (1) (b) and (c) of the draft RTS. As we have explained before, Boerse Stuttgart as a trading venue does not know in the first place whether a transaction has failed or not and therefore sending notifications about completely or partially failed buy-ins is an unnecessary inconvenience for the trading venues and leads to useless data aggregation.

We would like to emphasize that the current terms and conditions of Boerse Stuttgart (§§ 28ff of the "Bedingungen für die Geschäfte an der Baden-Württembergischen Wertpapierbörse") provide for a just and approved procedure for failed transactions.

Please find the terms and conditions under the following link:

[https://www.boerse-stuttgart.de/files/bedingungen\\_fuer\\_geschaefte\\_03042015.pdf](https://www.boerse-stuttgart.de/files/bedingungen_fuer_geschaefte_03042015.pdf)

**Q3: Should you believe that the collateralisation costs attached to this option are significant, please provide detailed quantitative data to estimate the exact costs and please explain why a participant would need to collateralise its settlement instructions under this option.**

Boerse Stuttgart believes trading counterparties are best placed to provide this analysis. However, requiring collateralization for failed settlement will add significant complexity and cost to the process which is not present nor is there any effective mechanism to achieve this today.

**Q4: If you believe that option 1 (trading party executes the buy-in) can ensure the applicability of the buy-in provisions are effectively applied, please explain why and what are the disadvantages of the proposed option 2 (trading party executes the buy-in with participant as fall back) compared to option 1, or please evidence the higher costs that option 2 would incur. Please provide details of these costs.**

Boerse Stuttgart believes trading counterparties and CSD participants are best placed to provide this analysis.

**Q5: Please provide detailed quantitative evidence of the costs associated with the participant being fully responsible for the buy in process and on the methodology used to estimate these costs.**

Boerse Stuttgart believes trading counterparties are best placed to provide this analysis.