

**EBA CLEARING comments on the
consultative paper ‘Guidelines on
participant default rules and
procedures under CSDR’ of the
European Securities and Markets
Authority (ESMA)**

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EBA CLEARING comments on the consultative paper on Guidelines on participant default rules and procedures under CSDR of the European Securities and Markets Authority

About EBA CLEARING

EBA CLEARING is a bank-owned provider of pan-European payment infrastructure solutions. The Company was established in June 1998 by 52 major European and international banks with the mission to own and operate EURO1, the only privately owned RTGS-equivalent large-value payment system on a multilateral net basis. Since 2000, EBA CLEARING has been running the STEP1 single payment service on the EURO1 platform, which is geared at medium-sized and smaller banks. EBA CLEARING also owns and operates STEP2-T, a Pan-European Automated Clearing House (PE-ACH) for processing euro retail payments. Today, EBA CLEARING counts over fifty shareholder banks and, through its EURO1 and STEP2-T systems, offers both high-value and low-value clearing and settlement services to a wide community of banks in the European Union.

Both EURO1 and STEP2-T have been classified by the Eurosystem as systemically important payment systems. The systems are held to the highest oversight requirements as laid down in the Regulation of the European Central Bank (EU) No 795/2014 of 3 July 2014 on oversight requirements for systemically important payment systems (ECB 2014/28), which implements and is consistent with the “Principles for financial market infrastructures” (PFMIs), introduced in April 2012 by the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements and the Technical Committee of the International Organization of Securities Commissions (IOSCO). The European Central Bank is the Competent Authority for the oversight of the EURO1 and STEP2-T systems.

EBA CLEARING welcomes the opportunity provided by ESMA to comment on the consultative paper on Guidelines on participant default rules and procedures under CSDR. The Company’s comments mainly relate to section 5.1.2 ‘Acknowledgement of a participant’s default’ / Question 2.

General comments

The Settlement Finality Directive adopted in May 1998 is aimed at reducing the systemic risk associated with participation in payment and securities settlement systems, and in particular the risk linked to the insolvency of a participant in such a system. The Directive applies to payment and securities settlement systems as well as any participant in such a system (and to collateral security provided in connection with the participation in a system, or operations of the central banks of the Member States in their functions as central banks).

In 2009 the Settlement Finality Directive was amended in order to bring the Directive in line with market and regulatory developments in the post-trading area, and ESMA was assigned the task to maintain the lists of designated systems and designated authorities on its website while the notification procedure as such was not amended.

The current draft Guidelines address the manner in which the CSD could become aware of the opening of insolvency proceedings against a participant and the Guidelines prescribe an active role with regard to verification by the CSD of the information

EBA CLEARING comments on the consultative paper on Guidelines on participant default rules and procedures under CSDR of the European Securities and Markets Authority

received. This is a deviation from the procedure as laid down in the SFD, aimed at only one type of FMIs.

EBA CLEARING is of the opinion that ESMA, given its central role under the revised SFD, could provide for a more efficient and effective notification procedure which would encompass all types of FMI's, thus ensuring that different types of FMI's act on the same information and at the same moment in time.

Article 6 of the SFD lays down the principles of notification of insolvency proceedings for a participant in a payment or securities settlement system. The procedure boils down to the following:

1. The opening of insolvency proceedings is handed down by a judicial or administrative authority in Member State X (art 6(1));
2. This judicial or administrative authority in Member State X sends a notification to the appropriate 'SFD authority' in Member State X (art 6(2));
3. The 'SFD authority' in Member State X notifies the opening of insolvency proceedings to the ESRB, ESMA, appropriate 'SFD authorities' in other Member States (art 6(3)) – and to FMIs in member State X;
4. Appropriate 'SFD authorities' in the other Member States notify 'their' FMIs;
5. Upon receipt of the notification FMIs execute the insolvency procedures as laid down in the system rules

In order to improve the speed of the receipt of notifications and to ensure the completeness of notifications, our suggestion is that Step 4 above is amended as follows:

4. ESMA notifies the opening of insolvency proceedings to all FMIs immediately by forwarding the notification it has received

ESMA could do so by sending (push) messages (either email or SMS) to all designated FMI's, for which ESMA already administers the list with contact details on its website.

ESMA's role under the revised SFD, in our opinion, allows for the change in the procedure. The active role of ESMA will have a significant impact in terms of timeliness of notification to FMIs outside the country where the actual insolvency event takes place, thus allowing for a more immediate response to the event by applying the default rules and procedures in place. This will contribute to securing financial stability in a wider cross-border context.

ESMA's active distribution of information to all FMIs takes away the need for the suggested verification by CSDs as prescribed in section 5.1.2.

Answer to question 2

In line with our comments above, EBA CLEARING is of the opinion that ESMA should not introduce an acknowledgement process for one type of FMIs only, and should not deviate – by introducing a verification step – from the Settlement Finality Directive. Notifications by designated authorities and ESMA should be acted upon without a need for verification by the FMI. As a principle, the basic procedure should not require

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verification with the FMI's Competent Authority prior to implementation of default rules and procedures.

Concluding comments

One final comment we would like to make refers to the actual 'SFD page' on ESMA's website. EBA CLEARING is of the opinion that the details of 'SFD authorities' and 'Designated systems' are not easy to find on ESMA's website and deserve a more prominent place on ESMA homepage.

To conclude our reply to the public consultation, should you wish any elaboration on the comments made, EBA CLEARING is more than willing to respond to such request.