The European Focus Committee of the Association of Global Custodians[[1]](#footnote-1) (“AGC-EFC” or the “Committee”) welcomes the opportunity to respond to the above-captioned Consultation Document. Established in 1996, the Association of Global Custodians (the “Association”) is a group of 12 global financial institutions that each provides securities custody and asset-servicing functions primarily to institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members’ common interests on regulatory and market structure. The member banks are competitors, and the Association does not involve itself in member commercial activities or take positions concerning how members should conduct their custody and related businesses.

The Committee welcomes the opportunity to provide comments to ESMA on its consultation paper regarding the draft guidelines for the reporting of internalized settlement transactions under Article 9 of Regulation 909/2014 and the respective delegated acts (the “draft guidelines”).

The Committee members have taken note of the response that the Association for Financial Markets in Europe (“AFME”) has developed and would like to voice its broad support for the messages expressed in that response.

In particular the Committee would like to highlight a few key messages that ESMA is encouraged to take into consideration:

1. **Account provider reporting**

ESMA seemingly has suggested in its draft guidelines (paragraphs 12(d) and 15) that in cases of transfers that are only executed in the books of an account provider (i.e. a sub-custodian or global custodian) between two accounts of the same account holder, it should be the account holder which is the reporting entity and not, as in all other cases, the account provider. The Committee believes that this inconsistency in the draft could place a great burden on both account holders and account providers, as both will need to determine whether they should report. Given the many different scenarios that may occur, the current text will generate cases both of under- and of over-reporting.

The Committee believes that there should be a consistent application of the simple rule that in the event of transfers between accounts in the books of an account provider, then the account provider reports. This interpretation would clearly be in line with the general approach ESMA has adopted in its introductory sentence to paragraph 15 of the draft guidelines.

1. **Non-EU securities**

The Committee believes that the reporting obligation, as set out in paragraph 13(b) of the draft guidelines, is confusingly drafted, is far too broad, and in practice would be very difficult to meet. The proposed rule should be replaced by a practical, operational rule: in its response AFME makes a proposal for such a rule to focus on the foreseen place of settlement (“PSET”) that is part of the client’s settlement instruction.

1. **Source of pricing information**

While not explicitly consulted on, the Committee believes that rules set out in the Level 2 text with respect to the source of pricing information for free-of-payment transfers are both unnecessary and very burdensome. In the context of three-monthly aggregated reports, the problem of very minor pricing differences for some limited types of transfer would appear to be very marginal. In addition the rules seem to be unduly burdensome as each settlement internaliser may need to change its process for sourcing and updating price information in its securities database, and would appear to need a “pre-determined” methodology that is “approved” by the NCA. We believe that there is a need for ESMA to develop a workable process that can be set out in the guidelines. We believe that synergies are possible with the pricing information that will be needed for the calculation of CSDR late settlement penalties.

The Committee hopes that ESMA will find these additional comments useful in its process to finalise its guidelines and the Committee stands ready for any additional questions that may arise.

Laura Bates

Committee Secretary

For and on behalf of the European Focus Committee of the Association of Global Custodians

1. The members of the Association of Global Custodians are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company. [↑](#footnote-ref-1)