ASSOCIAZIONE INTERMEDIARI
MERCATI FINANZIARI - ASSOSIM

Milan, 13 September 2017

Prot. 47/17
MFE/mbi

ESMA

CS 60747
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Re: ASSOSIM contribution to ESMA consultation on "*Guidelines on Internalised Settlement Reporting under Article 9 of CSDR*"

Assosim[1] welcomes the opportunity to comment on the ESMA consultation paper in subject and is pleased to provide the following observations.

Please, note that the present document was drafted in cooperation with the Italian Banking Association (ABI).

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Q1: Do you have any comments or suggestions regarding the scope of the data to be reported by settlement internalisers? Please provide arguments supporting your comments and suggestions.

As it regards the types of transactions and operations that should be considered **in scope** of Internalised Settlement Reporting (ISR), and precisely point (a) of paragraph 11 (i.e. *purchase or sale of securities, including primary market purchases or sales of securities*), we consider

[1] *Associazione Intermediari Mercati Finanziari* - ASSOSIM is the Italian Association of Financial Markets Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. Assosim has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the investment services industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the Italian total trading volume.

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necessary a clarification by ESMA in the final text of the Guidelines as to what is actually and precisely meant by "*primary market purchases or sales of securities*", by providing examples: subscriptions of new issuances, settled through a SSS, are then recorded in the books of the subscriber's clients? Is such recording in scope of point (a)?

As for point (m) regarding *corporate actions on flow represented by transformations*, in our understanding reporting shall include the following transactions:

- transformations processed by a settlement internaliser as related to securities transfers originally instructed for settlement in its books.

We would greatly appreciate to receive a confirmation of the correctness of our understanding.

As it regards the transactions and the operations that should be **out of scope** of the ISR (i.e. par. 12 on page 10), point (d) would be ideally welcomed to be in scope of ISR, hence deleted from this list and moved to the former paragraph 11. Indeed, having the *"transfers of securities between two accounts of the same client"* in scope of the reporting, it would allow settlement internalisers to simplify and optimise their duties toward their clients (as internalisers would not have to constantly liaise with them on what it was or was not internalised), and it would exempt such clients from the onus of peculiar reports. In our opinion, such proposal would make the reporting simpler and respond to a more prudent approach. Should such suggestion be welcomed, then, the example on par. 15 should be deleted as it would result inconsistent.

As for point (e) of para. 12, we agree with this exemption. At the same time, we highlight that banks may not be aware of the relation existing between instructed cash payment and securities transactions. Banks would only be able to report internalised cash instructions which are instructed by clients as PFOD (Payment free of delivery). Accordingly, we would suggest specifying that only this kind of cash instructions has to be reported.

As for letter (g), such point describes a pair-off (also referred to as "technical netting") at settlement level (as opposite to netting at trade level that is out of scope). We disagree with the required reporting obligation because the settlement at the CSD of the "delta" instruction (deriving from the pair-off of other instructions) seems inconsistent with (i) the definition of "internalised settlement" and with (ii) the aim of the Regulation to reduce the settlement risk. We encourage ESMA to reconsider its position and to amend the guidelines in this regard, by leaving technical netting and pair-offs out of the scope of internalisation reporting, as long as the risk element/component of the transaction is actually settled at the CSD.

In our understanding, the entity responsible for the reporting could only be the entity who has received an instruction and has not forwarded it to the next part of the custody chain. Hence, **if the instruction has been forwarded, then no reporting obligation should exist.**

Eventually, as it regards paragraph 13, we are in favour of specifying that an instruction is subject to ISR only in case the intended PLACE OF SETTLEMENT (PSET) indicated by the instructing party is an EU CSD. This would (i) simplify the process and (ii) avoid reporting those internalized settlement instructions that are due to settle in a CSD not authorized under CSDR. In other terms, the intended PSET, reported in the clients' settlement instructions field, should help to correctly meet the requirements and to ensure that out-of-scope instructions will (consequently) not be reported.

An example might contribute to clarify our message and understanding:

US Treasury Bond – Issuer CSD = Fedwire New York
Security can be settled inter alia in Fedwire New York and Euroclear Bank

Two clients of "Custodian A" deal in the bond and send respective instructions to A, hence:

a)

Client X: PSET Euroclear Bank
Client Y: PSET Fedwire New York

No internalisation – it would be settled externally through a link between Euroclear and Fedwire;

b)

Client X: PSET Euroclear Bank
Client Y: PSET Euroclear Bank

Internalisation is possible and hence reportable;

c)

Client X: PSET Fedwire New York
Client Y: PSET Fedwire New York

Internalisation is possible: booking location, Fedwire New York – no internalisation reporting applies as no European security and no European CSD is involved.

Q2: Do you have any comments or suggestions regarding the entities responsible for reporting to competent authorities? Please provide arguments supporting your comments and suggestions.

As already mentioned in our comment on paragraph 12 (d), we consider more appropriate placing the reporting obligation – related to an internal settlement involving two custody accounts of the same client – on the entity that processes the internal settlement. Indeed, in our understanding, the reporting entity is the entity which has received an instruction and has not forwarded it to the next party of the holding chain. Should ESMA agree on former, in the example reported on par. 15 it would be "entity B" to have to report the internal settlement, and not "entity A".
In addition, we would like to highlight that there may be scenarios where accounts maintained at a CSD are operated by a different party than the account owner. The account operator in such a scenario would only receive the instruction(s) to update the internal records. However, it will be the account owner to decide whether to internalise it or not. We agree that, depending on the account operator set-ups, the account operator can provide information to the account owner to complete its legal obligation, but this should be done on reasonable commercial terms.

In relation to paragraph 17, we share ESMA's view that no settlement internalisation reporting be required for transactions which are internalised in Third Country branches irrespective of the underlying instrument.

Q3: Do you have any comments or suggestions regarding the proposed data reporting parameters? Please provide arguments supporting your comments and suggestions.

The text of par. 25 appears to be not consistent with par. 23: indeed, the settlement internaliser has to report both sides of a transaction. We also believe that the relevant quarter of reported transactions should be selected through the comparison of the actual settlement date (ASD) with the intended settlement date (ISD). Instead, the example suggests including the value of the same failed transaction as many times as the number of days it failed. The aim of this reporting method is unclear and we fear that it could lead to a distortion of the final aggregated data.

Hence, we suggest determining the data on settled transactions and on failed transactions for a given period by selecting their ASD to avoid any subsequent transmission of corrections due to

cancellations of instructions or transformation of instructions. Also, please, consider that the proposed Guidelines do not clarify the way and timeline with which an already submitted report might be subsequently corrected.

Settlement internalisers are required to consider the "type of transaction" within the report. Information about the type of settlement transaction is available only if a client provides it. Therefore, the default selection of "other securities transactions" has to apply anytime the background information of the instruction is not provided by the client.

As it regards par. 27, and precisely the period of time covered by the first report, we strongly suggest ESMA to advice NCAs to provide for a testing period, prior to the transmission of the first report (due by July, 12th, 2019). This testing period will be beneficial to verify and fine-tune the technical, procedural constraints, and any exception-management and recycling rules related to transmission of the reporting.

Q4: What are your views regarding the proposed requirement according to which settlement internalisers should use an XML format based on the ISO-20022 compliant XSD schema?

As settlement internalisers are required to transmit to National Competent Authorities data in accordance with Article 9 of CSDR in an XML format based on the ISO-20022 compliant XSD schema, to be published by ESMA, we would greatly appreciate to be aware and to have visibility of the suggested XSD schema, ideally making them available at the earliest opportunity, in order to ensure internalisers can comply with the requested format and include the relevant costs in the budget planning.

Q5: Do you have any comments or suggestions regarding the proposed process for submission of internalised settlement reports? Please provide arguments supporting your comments and suggestions.

The report shall include information that is in ISO standards, like CFI (10962), MIC (10383), FISN (18774), country code (3166) and currency (4217). We deem that ESMA should identify specifically every single entity/provider able represent a so-called "Golden Source" for the above-mentioned data/fields/information. By doing so, ESMA would first of all ensure a base-line consistency in the reporting done by the internalisers, and also it would relieve internalisers of the responsibility of any mistakes that could, by any means, occur due to errors or corruption of the data/information sourced by the Golden Source. Indeed, currently, agent banks and other users have to compare several sources on the same specific data (among which, we also find

CFI (10962), MIC (10383), FISN (18774), country code (3166) and currency (4217)) in order to be confident in and to ensure correctness and reliability of the data actually used. Hence, our proposal regarding the need and appropriateness of a Golden Source identified by ESMA.

With reference to par. 31, it would be useful for stakeholders to be made aware of the timeframe within which the reporting entities will obtain "the confirmation of receipt" by the National Competent Authority and the timeframe for re-submitting the report, should any corrections need to be made.

Q6: Do you have any additional comments or suggestions regarding the proposed guidelines? Please provide arguments supporting your comments and suggestions.

Delegated Regulation (EU) 2017/391, Article 2(3), sets out detailed requirements as to the source(s) for computing the market value(s). Members raised concerns about such requirements for FOP transactions (art. 2(3)b), as the determination of market value for FOP transactions entails the use of different price sources for the same ISIN (i.e. banks already use approved service providers to source price feeds). Accordingly, we would suggest and welcome the creation by ESMA of a public source of price information to be used specifically for FOP transactions, or any form of help and support by ESMA at least to identify a so-called golden source for the "*the closing price of the most relevant market in terms of liquidity*" and for "*the closing price of the trading venue within the Union with the highest turnover*" (as provided for, respectively, in Art. 2(3), second paragraph, point (a) and (b)), in order to ensure consistency to the above-mentioned requirements.

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We remain at your disposal for any further information or clarification.

Yours faithfully,

Gianluigi Gugliotta
Secretary General