



14 September 2017

European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

Via electronic submission

Dear Sir/Madam,

Consultation Paper – Guidelines on Internalised Settlement Reporting under Article 9 of the Central Securities Depository Regulation (CSDR)

State Street welcomes the opportunity to comment on the ESMA consultation regarding guidelines on internalised settlement reporting under the CSDR.

State Street Corporation (NYSE: STT) is one of the world's leading providers of financial services to institutional investors, including investment servicing, investment management and investment research and trading. With \$31.0 trillion in assets under custody and administration and \$2.60 trillion¹ in assets under management as of 30 June 2017, State Street operates in more than 100 geographic markets worldwide, including the US, Canada, Europe, the Middle East and Asia. For more information, visit State Street's website at www.statestreet.com.

We appreciate ESMA's ongoing efforts to engage industry with the implementation of CSDR, especially in relation to the development of clear and consistent guidelines for the reporting requirements. We include some general comments below as well as responses to specific questions of importance to us. State Street has also contributed to certain industry responses – the German Banking Industry Association (DK) as well as the Association of Global Custodians' Committee (AGC) – and further details can be found in those submissions.

We believe several additional clarifications around the scope and format of the reporting requirements are required to ensure consistent implementation of the reporting guidelines. This is particularly important considering the timing by which ESMA is expected to produce its final guidelines and given the confirmation that the settlement activity period of the first reporting by settlement internalisers is Q2 2019, with the first report due to competent authorities by 12 July 2019. We therefore urge ESMA to complete its work as soon as reasonably possible.

¹ AUM reflects approx. \$34 billion (as of June 30, 2017) with respect to which State Street Global Markets, LLC (SSGM) serves as marketing agent; SSGM and State Street Global Advisors are affiliated.

Developing suitable tools and processes to meet the reporting requirements will be heavily dependent on the guideline outcomes and therefore firms will require sufficient time for project planning, budget forecasting, determining and implementing build specifications, and testing.

Thank you once again for the opportunity to comment on the important matters raised within this consultation paper. Please find below detailed comments on the specific questions; feel free to contact me should you wish to discuss State Street's submission in greater detail.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'D. S. Kasper', with a long horizontal stroke extending to the right.

Dr. Sven S. Kasper

Senior Vice President
EMEA Head, Regulatory, Industry and Government Affairs

Detailed comments on specific questions

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.

We appreciate ESMA's efforts to specify the scope of activity to be reported, but believe some of the guidelines in this section require further clarification. Initially, we suggest that ESMA provide its rationale for inclusion and exclusion of certain settlement activities in scope of reporting as well as how these conclusions were reached on the basis of the definitions of settlement internalisers and internalised settlement instructions within CSDR texts. For the avoidance of doubt, ESMA should consider adding a general statement confirming that the reporting obligation for covered transactions is legally triggered only when the in-scope settlement activity is internalised by the settlement internaliser. We provide detailed comments on specific paragraphs below:

- 11(e) and 12(g) - **Transactions subject to netting**: we suggest that ESMA should clarify that any aggregation of trading activity prior to the generation of settlement instructions should not be considered in scope for reporting. In addition, we believe that any aggregation of settlement instructions should not be considered in scope for reporting provided the resulting net settlement instruction is not internalised but rather forwarded to the sub-custodian and/or CSD for settlement.
- 11(l) - **Reallocations of collateral for securities lending**: additional clarity would be welcome on the rationale for including reallocation of securities lending collateral – which we imagine would extend to reallocations of securities lending transactions and repurchase transactions (including reverse repos) – within the scope of reporting. In our view these types of transactions should be excluded from the scope of reporting. This is because securities finance transactions, including collateral and lifecycle events, will be subject to transaction reporting obligations under Article 4 of Regulation (EU) 2015/2365 (Securities Financing Transactions Regulation) by the end of 2018 / early 2019, and so competent authorities should have sufficient visibility of such transactions. Failure to remove these types of transactions would result in duplicative reporting requirements.
- 12(d) - **Transfers between two accounts of same client**: we broadly agree with the principle that transfers of securities between related funds that are part of the same client should not be in scope for reporting where there is no change in beneficial owner. However, in practice, the efficient exclusion of “same client” transactions from internalisation reporting may not be practicable. In today's environment client legal entities operate complex fund structures where funds under the same parent entity may have different or similar underlying beneficial ownership designations. These distinctions can be generally tracked within custody systems using client and fund indicator tools although legal verifications of beneficial ownership designations for tax servicing and other purposes still require additional verification processes and statement confirmations between clients and their custodians. Therefore, the determination of which transactions attributed to the same client that may be subject to the reporting requirements or not does not lend itself to supporting a fully automated solution for internalisation reporting. We therefore suggest that the inclusion in the reporting of internalised settlements for funds of the same client on an account by account basis, regardless of change in beneficial ownership, should be permitted.

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.

We are in general agreement with the points ESMA provides regarding entities responsible for reporting to competent authorities with a focus on ensuring that internalised settlements are not

double counted in the aggregate across Europe. This includes ESMA's confirmations that the settlement internaliser should only be responsible for reporting internalised settlements that take place on its own books and not at a different part of the chain; reporting guidance for the settlement internaliser in its home member state with respect to inclusion of the activity of its branches located in the Union; and, apparent confirmation that internalisation that may take place at third country entities outside the Union is not in scope for the reporting.

Paragraph 15 (d) includes an example of the reporting requirement where an entity A in the securities holding chain maintains an omnibus account and technical sub-accounts at another entity B. We find this example to be confusing and it introduces uncertainty with respect the distinctions between the responsibilities of account holders and account providers. ESMA's guidance in this paragraph is clear that reporting is required only by the entity that internalises settlement in its own books. In the example provided entity A is not internalising the settlement and should not be responsible for the reporting. Entity B is internalising the settlement on its books between the sub-accounts and therefore should be the reporting entity. We would ask ESMA to revise this example.

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

&

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?

ESMA confirms that settlement internalisers should submit data in an XML format based on the ISO-20022 compliance XSD schema to be published by ESMA. As mentioned, we would urge ESMA to publish this information as soon as reasonably possible. Developing a suitable tool and processes to meet the reporting requirements is heavily dependent on the format required and sufficient time will be needed for budgeting, development, implementation, and testing. In addition, given the significant resources that will go into developing the reporting capabilities, we would expect the execution of the reporting process is devised in such a way that it will remain stable for the foreseeable future, and not subject to material alterations.

In terms of data reporting parameters, ESMA states that settlement internalisers should fill in the first two characters of the relevant ISIN codes in the Issuer CSD country code field referred to in the template set out in Annex I of Regulation (EU) 2017/393. We support industry view that a more effective way to report is to use the Place of Settlement code (PSET) found in the transaction detail of client instructions. The reason for this is that the PSET indicates where a trade would settle if it were to be sent along the settlement chain and not internalised. It is possible that an internalised settlement may not necessarily have been destined to settle at the issuer CSD but potentially at another one (e.g., ICSD), and therefore the PSET would likely provide more meaningful information to the competent authorities for any risk evaluation purposes.

On the treatment of fails in the reporting, we believe the guidance remains unclear and would welcome further commentary from ESMA. This could take the form of additional examples or scenarios on how ESMA is expecting internalisers to account for and aggregate failing transactions in the reporting. In particular, examples that describe the appropriate reporting for internalised transactions that fail and eventually settle across more than one reporting quarter would be helpful.

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.

Information Classification: General

We appreciate ESMA's efforts to set out guidelines on the mechanics of submission and handling of internalised settlement reports between competent authorities and ESMA. It is important to have a harmonised flow of the data reporting between settlement internalisers, competent authorities and ESMA. It is also critical to ensure that the data reporting and delivery requirements are understood consistently by settlement internalisers and competent authorities in the different Member States, so that there is no room for variability in process interpretations and expectations. We would therefore suggest that ESMA considers further elaborating on the necessary granular steps settlement internalisers should follow in the data reporting flow between them and competent authorities, not just between competent authorities and ESMA as is the case with these guidelines. For instance, the guidelines should require competent authorities to provide feedback on reports submitted by settlement internalisers within a reasonable timeframe after receiving them to allow for any necessary reporting amendments by the settlement internalisers to be undertaken without undue delay. In addition, we strongly believe that a testing period of the reporting flows, prior to the first report being due, would be important and therefore ask ESMA to consider including requirements for a testing process within these guidelines.

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

We do not have specific comments on Question 6.