



European Securities and Markets Authority (ESMA)
CS 60747
103 Rue de Grenelle
75345 Paris Cedex 07
France

Submitted online at www.esma.europa.eu under the heading 'Consultations'

22 May 2014

RE: Discussion Paper - Draft Technical Standards for the Regulation on improving securities settlement in the European Union and on central securities depositories (CSD) ESMA/2014/299

Thank you for the opportunity to provide comments on the above referenced consultation. We have set out below our views on this crucial subject and are happy to discuss our response in more detail with ESMA.

By way of background, BATS Chi-X Europe (BATS) is the largest European equities exchange by market share and value traded. We support open and fair competition and drive innovation in the European equities markets. We make available for trading more than 3,600 of the most liquid equities across 25 indices and 15 major European markets, as well as ETFs, ETCs and international depositary receipts. BATS also operates a regulated market for the listing of ETFs. In addition, BATS' leading pan-European trade reporting service, BXTR, now reports the majority of OTC equity market trading, covering over 11,000 equities.

BATS Chi-X Europe is the brand name of BATS Trading Limited, a subsidiary of BATS Global Markets Inc., which is a leading operator of stock and options markets in the U.S. and Europe. BATS Chi-X Europe is a Recognised Investment Exchange regulated by the UK Financial Conduct Authority (FCA).

Full details about BATS Chi-X Europe, the services it offers and how it operates can be found on our website at www.batstrading.co.uk

Responses to some of the consultation questions are set out below, however, BATS Chi-X Europe would like to address one issue that is not covered by the consultation but which is a vital component of the proposed buy in regime:

Who manages the buy-in procedure?

- For the purposes of risk management and settlement efficiency, BATS believes that the buy-in procedure should be managed by CCPs where they are part of the value chain.

- Where there is no CCP involved in the settlement process, the CSD should be responsible for managing the whole buy-in procedure, which may be delegated to a trading venue, subject to agreement between the trading venue and the CSD.
- Where there is no CCP and the trading venue has no direct link or relationship to the CSD, the CSD should be responsible for the buy-in procedure.

Due to the important role FMI's play in the market they should not be subject to buy-in regimes themselves as costs would have to be passed onto participants, therefore introducing a duplicative fining regime.

Q4: Do you share ESMA's view that matching should be compulsory and fields standardised as proposed? If not, please justify your answer and indicate any envisaged exception to this rule. Are there any additional fields that you would suggest ESMA to consider? How should clients' codes be considered?

- **Yes.** BATS is a strong believer in participants matching settlement instructions prior to settlement date as this increases the settlement rate on Intended Settlement Date (ISD). To facilitate optimum matching rates within CSDs the same set of core or mandatory criteria should be applied (as appropriate per instruction type and asset class), which in turn should be supported by secondary or optional matching fields. Client codes should represent a known standard such as SWIFT BIC codes or Legal Entity Identifiers (LEIs).

Q5: Do you agree with the above proposals? What kind of disincentives (other than monetary incentives such as discounts on matching fees) might be envisaged and under which product scope?

- **No.** Given that most European markets are moving to T+2 in October 2014 this would require all market participants to instruct settlement instructions on trade date, or face some form of penalty. For participants who only trade on-exchange and settle through a central counterparty (CCP), this may be possible if the CCP is using a Power of Attorney (POA) structure to instruct settlement. However, this will penalise participants who receive trade positions later in the trading day. An example of this would be participants who are party to a transaction where another market participant has given up business to that participant at the end of the trading day (often after 18.00 CET) as is common for firms participating in the equity swap industry. These firms will then match the trades outside of the settlement system prior to instructing within the CSD.

In our opinion, incentives should not be deployed to encourage early settlement instructions. However, if this policy is introduced a sensible timeline would be S-1 and not S-2.

Q6: In your opinion, should CSDs be obliged to offer at least 3 daily settlements/batches per day? Of which duration? Please elaborate providing relevant data to estimate the cost and benefit associated with the different options.

- **Yes**, BATS would support CSDs being obliged to offer at least three daily settlement cycles/batches per day, and ideally more where practical. We believe that by having more settlement cycles, participants who have onward settlement obligations can have earlier access to their settlement positions which will free-up settlement liquidity. An example is our experience in the Spanish market, whereby there are three bilateral settlement cycles under the Title V settlement regulation. The bilateral settlement cycle only allows for delivery between two participants (the deliverer and receiver) in any one cycle. Therefore the receiver cannot use the stock until the next settlement cycle, which for exchanges such as ourselves who interpose a CCP in the middle of every trade through novation, creates a restrictive process and reduces the efficiency of the available settlement liquidity.
- As referenced in point 15 and 16 (page 11) the consultation paper supports the introduction or adoption of continuous matching, so settlement batches should also be more frequent in nature, which will in turn aid settlement liquidity and reduce potential fails.

Q7: In your view, should any of the above measures to facilitate settlement on ISD be mandatory? Please describe any other measure that would be appropriate to be mandated.

- All of the suggested features should be offered by CSDs and have in BATS' opinion aided settlement efficiency in the equities markets where offered. BATS would however caution against the mandatory introduction of all aspects as they may not be appropriate for all participants or all asset classes.

Q13: CSDR provides that the extension period shall be based on asset type and liquidity. How would you propose those to be considered? Notably, what asset types should be taken into consideration?

- BATS agrees with the view set out in the consultation paper that asset classes (and trading liquidity within that asset class) should be taken into consideration when defining the buy-in period extension. The asset classes BATS believes (whilst not exhaustive) should be considered are: equities outside of the main blue chip indices, depositary receipts, warrants, exchange traded products (umbrella category for ETFs, ETNs, ETCs) and less liquid fixed income securities.

Distinction should be made per asset class and liquidity within an asset class in determining between S+4 and S+7. Traded liquidity should be a factor and should not be based on market cap or assets under management or share free float. As an example, ETFs should be subject to a longer timeline prior to buy-in as ETF funds often contain a basket of securities, which may be settled outside of the EEA.

Q17: Do you agree on the proposed approach? How would you identify the reference price?

- BATS would suggest that where a buy-in is not possible, a reasonable mechanism for compensating the receiving party would be to use an average closing price as sourced from multiple price sources, where available.

Q18: Would you agree with ESMA's approach? Would you indicate further or different conditions to be considered for the suspension of the failing participant?

- **No.** BATS believes that suspension, whilst considered a last resort, should be part of the FMIs rule structure it has with its participants. This is the case today, with many FMIs having complementing rule book structures which allow for a flexible approach to managing participants between themselves.

Q19: Please, indicate your views on the proposed quantitative thresholds (percentages / months).

- In BATS opinion setting quantitative thresholds or any hard prescriptive limits runs the risk of a participant being suspended which could have a further detrimental impact on settlement efficiency. BATS preferred approach would be for the appropriate FMI to manage the participant with suspension being the last resort in a managed process.