

**Draft Technical Standards for
the Regulation on improving
securities settlement in the
European Union and on central
securities depositories (CSD)**

**Response to ESMA's
Discussion Paper**

22 May 2014

Introduction

The Italian Banking Association represents the interests of over 950 member banks¹, large and small, wholesale and retail, local and cross-border financial institutions and welcomes the opportunity to comment on the discussion paper issued by ESMA.

First and foremost, please, note that the present document was drafted in cooperation with the Italian financial intermediaries association (ASSOSIM). The text that follows below will be identical in both the response documents.

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Question 1 - Which elements would you propose ESMA to take into account / to form the technical standards on confirmation and allocation between investment firms and their professional clients?

We believe that, in order to achieve an 'early matching' containing every information necessary to implement a straight-through-process (STP) of orders, it is essential and unavoidable to achieve a very detailed management of the standard settlement instructions (SSI), to be clearly exchanged from a trading point of view.

Question 4 - 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?

In Italy a market practice was recently developed and formally agreed upon by the main important market players about the matching of CSD participants' client information (i.e. second layer matching) into the Italian matching platform (X-TRM).

In particular, the Italian CSD has introduced in X-TRM two new optional matching fields that are dedicated to the "client of the CSD receiving participant" and the "client of the CSD delivering participant". The BIC11 code was adopted as the standard identifier of the CSD participant's client in line with T2S templates. For further details please see Annex 1.

With reference to the above, we suggest ESMA considering the additional fields required by "second layer matching" as matching fields within the CSDR technical standards. The management of such fields, to be included in the SSIs, must be clear to the trading participants as well, in order to achieve a higher level of STP.

¹ As at end 2013.

We also consider necessary to set a rule for free-of-payment (FOP) instructions, as they are important when portfolio transfers occur.

Question 5 - 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

Firstly and preliminarily, we agree with ESMA that “Participants should be able to know that their instruction did not match” and “the reason why”, as stated in paragraph 25. However, Participants without allegation have no means of knowing the reason why an instruction did not match. Besides, currently those participants with an allegation find themselves a generic “counterparty missing message” in case of any missing piece of information, which can potentially relate to a number of different details on the Counterparty. In other words, the “counterparty missing” message is a useful alert tool, but it should be enriched in a way that it may allow it to signal which specific piece of information about the counterparty is missing. Actually, considering that in T2S the set up for the standard delay period is equal to 1 hour after the first matching attempt, we suggest to address the issue to ECB in order to reduce time for allegation reporting to CSD participants.

Secondly, T2S platform will have to offer its Participants a facility allowing any penalty or disincentive for late sending or late matching of complete instructions to be turned onto the relevant Client causing the late matching/sending. More precisely, in the new post-trading landscape designed by T2S, it will be crucial for any T2S participant to be provided with an analytical breakdown regarding late-sent or late-matched instructions so to have the possibility to rebate any related fee/penalty on the relevant Client which is actually causing that. And this is pivotal because large T2S participants carry large volumes of instructions on behalf of their Clients.

Question 9 – Do you agree with the above monitoring system description? What further elements would you suggest? Please present the appropriate details, notably having in mind the current CSD datasets and possible impact on reporting costs.

Prior to commenting on the specific fields proposed in the discussion paper, we would like to bring forward for ESMA’s thorough consideration a very crucial issue: any T2S-market-wide monitoring settlement fails’ system should be weighted for the accounts structure behind a certain settlement system. Different account structures, such as the case – for instance – between the structure adopted in France and in Italy, imply different indicators for settlement fails monitoring. Whilst France-based market operators net their instructions at the clearing member level, those based in Italy (and Germany) net their instruction at the settlement account level. This misalignment currently brings security-settlement-systems wide statistics not to be comparable.

Considering the above, we would greatly appreciate ESMA to clarify how it will manage data flows incoming from different settlement systems.

Finally, as it regards the required data for settlement fails' reporting, we suggest 1) to refer them to each settlement cycle and 2) to assign to the term "value" the meaning of "Value at the Intended Settlement Date (ISD)".

Question 10 - What are your views on the information that participants should receive to monitor fails?

Settlement statistics are published by the Italian CSD on a weekly basis. The data breakdown could be made more granular. Annual frequency is deemed as absolutely insufficient.

Question 13 - 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?

As it regards buy-in mechanism, in Italy the extension period is already differentiated by asset type (equity vs bond). The degree of liquidity is not taken into consideration as, in practice, it appears too complex to apply; a solution could be found in a unique referential database to be set up in order to share the necessary elements/information and apply a consistent process.

On a different note, the Italian banking and financial industry deems essential to achieve a uniform treatment – namely, extension periods – of OTC and on-exchange traded contracts.

Question 14 - Do you see the need to specify other minimum requirements for the buy-in mechanism? With regard to the length of the buy-in mechanism, do you have specific suggestions as to the different timelines and in particular would you find a buy-in execution period of 4 business days acceptable for liquid products?

We agree with the 4 business days proposal for equity products. Consider that the actual problem entailed in the buy-in mechanism is the identification of the failing party. Indeed, when using a trade/settlement chain and omnibus accounts is not easy to understand and penalize the entity that caused the fail.

Question 15 - Under what circumstances can a buy-in be considered not possible? Would you consider beneficial if the technical standard envisaged a coordination of multiple buy-ins on the same financial instruments? How should this take place?

Question 16 - In which circumstances would you deem a buy-in to be ineffective?

We believe that the actual problem is the identification (and correct classification) of securities repurchase and lending transactions as in T2S this does not seem to be possible.

Question 17 - Do you agree on the proposed approach? How would you identify the reference price?

This question focuses the attention on an important topic for the industry. The eventual solution, which would clear any space left to potential issues, be ESMA or national competent authorities to officially identify the possible sources of information in order to get the reference price. Such sources of information shall be “ranked by priority” (as a water flow) to allow the CSD to move on to the next source, should any of those become unavailable, on a temporary or prolonged basis.

Question 18 - Would you agree with ESMA’s approach? Would you indicate further or different conditions to be considered for the suspension of the failing participant?

Firstly, we consider as basic as important ESMA to provide a definition for Settlement Instructions and of the process flow envisaged. We would reiterate again the importance of identifying the ‘real offender’, which may not always be the party that ‘fails to deliver’ the instruments in question.

Question 20 – What is in your view the settlement information that CSDs need to provide to CCPs and trading venues for the execution of buy-ins? Do you agree with the approach out-lined above? If not, please explain what alternative solutions might be used to achieve the same results ?

We understand that CSDs shall provide the necessary settlement information to CCPs and trading venues for the buy-ins to be executed. Associating the activity of each 1. Clearing Member/2. CCP /3. Participant to a trading venue, to a given securities account, is something achievable and already done. Very costly and burdensome is the obligation to open a segregated account for each single 1. Clearing Member/2. CCP /3. Participant to a trading venue, which is currently mapped within a given omnibus account.

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